



भारत का राजपत्र The Gazette of India

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं. 26]
No. 26]

नई दिल्ली, शनिवार, जुलाई 1, 1989/आषाढ़ 10, 1911
NEW DELHI, SATURDAY, JULY 1, 1989/ASADHA 10, 1911

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में
रखा जा सके
Separate Paging is given to this Part in order that it may be filed as
a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii) PART II—Section 3—Sub-section (ii)

(रक्षा मंत्रालय को छोड़ कर) भारत सरकार के मंत्रालयों द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India (other than
the Ministry of Defence)

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

आदेश

नई दिल्ली, 2 जून, 1989

MINISTRY OF PERSONNEL, P.G. AND PENSIONS

(Department of Personnel and Training)

ORDER

New Delhi, the 2nd June, 1989

का.आ. 1455.—केन्द्रिय सरकार, दिल्ली विशेष पुलिस स्थापन अधिनियम, 1946 (1946 का अधिनियम सं. 25) का धारा 6 के तहत पठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, कर्नाटक की राज्य सरकार को सहमति में, दिल्ली विशेष पुलिस स्थापन के सदस्यों की शक्तियों और अधिकारिता का विस्तार, निम्नलिखित अपराधों के अन्वेषण के लिए सम्पूर्ण कर्नाटक राज्य पर करती है :—

(क) भ्रष्टाचार निवारण अधिनियम, 1988 (1988 का अधिनियम

सं. 49) के अधीन अपराध।

(ख) ऊपर वर्णित अपराधों में से एक या अधिक अपराधों के संबंध में उनसे संबंधित प्रयत्नों, दृष्टिकोण और पद्धतियों तथा उन्हीं तथ्यों से उत्पन्न होने वाले ऐसे ही संबंधित तथ्यों के अनुक्रम में किए गए किसी अन्य अपराध या अपराधों के संबंध में।

[नं. 228/40/88-ए वा डी -II]

S.O. 1455.—In exercise of the powers conferred by sub-section (1) of Section 5, read with section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government, with the consent of the State Government of Karnataka, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Karnataka for investigation of offences as hereunder :—

(a) Offences under Prevention of Corruption Act, 1988 (Act No. 49 of 1988).

(b) Attempts, abetments and conspiracies in relation to or in connection with one or more of the offences mentioned above and any other offence or offences committed in the course of the same transaction arising out of the same facts.

[No. 228/40/88-AVD. II]

का.आ.1456:—केन्द्रीय सरकार, दण्ड प्रक्रिया संहिता, 1973 (1974 का 2) की धारा 24 की उपधारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, बंगलूर में अपील और पुनरीक्षण न्यायालयों में विचारण में आर.सी. 2/80 और मामला 3/80, एम सी यू (iii) और आर.सी. 4/80, ए.सी यू (i), नई दिल्ली से उद्भूत होने वाले श्री बालचुंगंगा और अन्य के विरुद्ध दिल्ली विशेष पुलिस स्थापन के विचारण का संचालन करने के प्रयोजन के लिए विशेष लोक अभियोजक के रूप में श्री एल ओनिवास रेड्डी, अधिवक्ता, बंगलूर को नियुक्त करती है।

[संख्या 225/4/88-ए वी डी (II)]

हजारा सिंह, उप सचिव

S.O. 1456.—In exercise of the powers conferred by Sub-section (8) of Section 24 of the Code of Criminal Procedure, 1973 (2 of 1974), the Central Government hereby appoints Shri L. Sreenivasa Reddy, Advocate, Bangalore, as Special Public Prosecutor for the purpose of conducting the trial of the Delhi Special Police Establishment against Shri Bualchungunga and another arising out of RCs 2/80 and Case 3/80, ACU (III) and RC. 4/80, ACU (I), New Delhi in the Trial Appellate and Revisional Courts at Bangalore.

[No. 225/4/88-AVD. II]

HAZARA SINGH, Dy. Secy.

वित्त मंत्रालय

(राजस्व विभाग)

नई दिल्ली, 25 अप्रैल, 1989

(आयकर)

का.आ.1457:—आयकर अधिनियम, 1961 (1961 का 43) की धारा 10 के खण्ड (23ग) के उपखण्ड (V) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार एतद्वारा "कैथोलिक बिशप कांफेंस आफ इंडिया" नई दिल्ली को कर-निधारण वर्ष 1985-86 से 1989-90 तक के लिए उक्त उपखण्ड के प्रयोजनार्थ अधिभुक्तित करती है।

[सं 8346-फा सं 197ए/85/82-आयकर(नि-I)]

के.के. त्रिपाठी, उप सचिव

MINISTRY OF FINANCE

(Department of Revenue)

New Delhi, the 25th April, 1989

(INCOME-TAX)

S.O. 1457.—In exercise of the powers conferred by sub-clause (v) of clause (23-C) of section 10 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies the "Catholic Bishop's Conference of India", New Delhi, for the purpose of the said sub-clause for the assessment years 1985-86 to 1989-90.

[No. 8346/F. No. 197-A/85/82-IT (AI)]

K. K. TRIPATHI, Dy. Secy.

नई दिल्ली, 8 मई, 1989

आयकर

का.आ.1458:—आयकर अधिनियम 1961, (1961 का 43) की धारा 10 के खंड (23-ग) के उपखण्ड (V) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार एतद्वारा "एरुलथिरु देवी करुमरियम"

थिरुक्वाडल" मद्रास को उक्त उपखण्ड के प्रयोजनार्थ कर निर्धारण वर्ष 1982-83 से 1984-85 के लिए अधिभुक्तित करती है।

[सं 8354 फा सं 197/4/85-आ.क. नि.-I]

दलीप सिंह, विशेष कार्य अधिकारी

New Delhi, the 8th May, 1989

(INCOME-TAX)

S.O. 1458.—In exercise of the powers conferred by sub-clause (v) of clause (23-C) of section 10 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies "Arulthiru Devi Karumariamman Thirukkol" Madras for the purpose of the said sub-clause for the assessment year(s) 1982-83 to 1984-85.

[No. 8354/F. No. 197/4/85-IT (AI)]

DALIP SINGH, Officer on Special Duty

आदेश

नई दिल्ली, 13 जून, 1989

स्टाम्प

का.आ.1459:—भारतीय स्टाम्प अधिनियम, 1899 (1899 का 2) की धारा 9 की उपधारा (1) के खण्ड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार एतद्वारा उस शुल्क को माफ करती है जो शिपिंग क्रेडिट एण्ड इन्वेस्टमेंट कम्पनी आफ इण्डिया लिमिटेड द्वारा जारी किए जाने वाले अस्सी करोड़ रुपये मात्र मूल्य के 9% कर मुक्त बंधपत्रों के रूप में वर्णित प्रामिसरी नोटों के स्वरूप के बंधपत्रों पर उक्त अधिनियम के अन्तर्गत प्रसार्य है।

[सं 29/89-स्टाम्प/फा सं 33/82/88-वि.कर]

ORDER

New Delhi, the 13th June, 1989

STAMPS

S.O. 1459.—In exercise of the powers conferred by clause (a) of sub-section (1) of section 9 of the Indian Stamp Act, 1899 (2 of 1899), the Central Government hereby remits the duty with which the bonds in the nature of promissory notes described as 9% tax-free bonds of the value of rupees eighty crores only to be issued by Shipping Credit and Investment Company of India Limited are chargeable under the said Act.

[No. 29/89-Stamp/F. No. 33/82/88-ST]

आदेश

स्टाम्प

का.आ.1460:—भारतीय स्टाम्प अधिनियम, 1899 (1899 का 2) की धारा 9 की उपधारा (1) के खण्ड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार एतद्वारा उस शुल्क को माफ करती है जो रूरल इलेक्ट्रीफिकेशन कॉर्पोरेशन लिमिटेड द्वारा एक सौ बावन करोड़ रुपये मात्र मूल्य के 9% (कर मुक्त) आरक्षित मोचनीय ऋणपत्र-1988 (सत्रहवीं सीरीज) के रूप में उल्लिखित प्रामिसरी नोटों के स्वरूप में जारी किए जाने वाले बंधपत्रों पर उक्त अधिनियम के अन्तर्गत प्रसार्य है।

[सं 30/89-स्टाम्प/फा सं 33/83/88-वि.कर]

ORDER

STAMPS

S.O. 1460.—In exercise of the powers conferred by clause (a) of sub-section (1) of section 9 of the Indian Stamp Act, 1899 (2 of 1899), the Central Government hereby remits the duty with which the bonds in the nature of promissory

notes and described as 9% (tax free) secured Redeemable Bonds—1988 (17th Series) of the value of rupees one hundred fifty two crores only to be issued by the Rural Electrification Corporation Limited are chargeable under the said Act.

[No. 30/89-Stamps/F. No. 30/10/89-बि० कर]

आदेश

स्टाम्प

का.आ. 1461:—भारतीय स्टाम्प अधिनियम, 1899 (1899 का 2) की धारा 9 की उप-धारा (1) के खण्ड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करने हुए केन्द्रीय सरकार एतद्द्वारा उस शुल्क को माफ करती है जो महानगर टेलीफोन निगम लि० द्वारा जारी किये जाने वाले तीन लाख करोड़ रुपये मात्र मूल्य के 9% (कर मुक्त) बंधपत्र (III श्रृंखला) के रूप में विनिर्दिष्ट ऋणपत्रों के स्वरूप में वधपत्रों पर उक्त अधिनियम के अन्तर्गत प्रसार्य हैं।

[नं. 24/89-स्टाम्प/का.सं. 33/30/89-बि० कर]

ORDER

STAMPS

S.O. 1461.—In exercise of the powers conferred by clause (a) of sub-section (1) of section 9 of the Indian Stamp Act, 1899 (2 of 1899), the Central Government hereby remits the duty with which the bonds in the nature of debenture described as 9% (tax free) Bonds (IIIrd Series) of the value of rupees three hundred crores only to be issued by Mahanagar Telephones Nigam Limited are chargeable under the said Act.

[No. 24/89-Stamps/F. No. 33/30/89-ST]

आदेश

स्टाम्प

का.आ. 1462:—भारतीय स्टाम्प अधिनियम, 1899 (1899 का 2) की धारा 9 की उप-धारा (1) के खण्ड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करने हुए केन्द्रीय सरकार एतद्द्वारा गुजरात राज्य सड़क परिवहन निगम, अहमदाबाद को बंधपत्रों द्वारा पाँच लाख करोड़ रुपये मात्र के उस समेकित स्टाम्प शुल्क की शर्तों पर करने की अनुमति देती है, जो उक्त निगम द्वारा जारी किये जाने वाले एक करोड़ दस लाख रुपये मात्र के मूल्य के 11.5% जी०एस०आर०टी०सी० ऋणपत्र शीट 2008 पर स्टाम्प शुल्क के कारण प्रसार्य हैं।

[नं. 25/89-स्टाम्प/का.सं. 33/11/89-बि० कर]

ORDER

STAMPS

S.O. 1462.—In exercise of the powers conferred by clause (b) of sub-section (1) of section 9 of the Indian Stamp Act, 1899 (2 of 1899), the Central Government hereby permits the Gujarat State Road Transport Corporation, Ahmedabad to pay consolidated stamp duty of rupees eighty two thousand five hundred only, chargeable on account of the stamp duty on 11.5% GSRTC Debenture Bonds 2008 of the total value of rupees one crore and ten lakhs only to be issued by the said Corporation.

[No. 25/89-Stamps/F. No. 33/16/89-ST]

आदेश

स्टाम्प

का.आ. 1463:—भारतीय स्टाम्प अधिनियम, 1899 (1899 का 2) की धारा 9 की उप-धारा (1) के खण्ड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करने हुए केन्द्रीय सरकार एतद्द्वारा मेसर्स सीमेन्ट कार्पोरेशन प्राइमेट लि० द्वारा जारी तीन लाख पचास हजार रुपये मात्र

के उस समेकित स्टाम्प शुल्क की शर्तों पर करने की अनुमति देती है, जो उक्त कार्पोरेशन द्वारा जारी किये जाने वाले 5 करोड़ रुपये मात्र मूल्य के ऋणपत्र पर स्टाम्प शुल्क के कारण प्रसार्य हैं।

[नं. 26/89-स्टाम्प/का.सं. 33/19/89-बि० कर]

ORDER

STAMPS

S.O. 1463.—In exercise of the powers conferred by clause (b) of sub-section (1) of section 9 of the Indian Stamp Act, 1899 (2 of 1899), the Central Government hereby permits M/s. Cement Corporation of India, New Delhi to pay consolidated stamp duty of rupees three lakhs and seventy five thousand only, chargeable on account of the stamp duty on debenture certificate of the total value of Rs. five crores only to be issued by the said Corporation.

[No. 26/89-Stamps/F. No. 33/19/89-ST]

आदेश

स्टाम्प

का.आ. 1464:—भारतीय स्टाम्प अधिनियम, 1899 (1899 का 2) की धारा 9 की उप-धारा (1) के खण्ड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करने हुए केन्द्रीय सरकार एतद्द्वारा उस शुल्क को माफ करती है जो रूरल इलेक्ट्रिफिकेशन कॉर्पोरेशन लिमिटेड द्वारा एक सौ बीस करोड़ रुपये मात्र मूल्य के 9% (कर मुक्त) रूरल इलेक्ट्रिफिकेशन कॉर्पोरेशन बंधपत्र 1999 के रूप में विनिर्दिष्ट ऋणपत्रों के स्वरूप में जारी किए जाने वाले बंधपत्रों पर उक्त अधिनियम के अन्तर्गत प्रसार्य हैं।

[नं. 27/89-स्टाम्प/का.सं. 33/28/89-बि० कर]

ORDER

STAMPS

S.O. 1464.—In exercise of the powers conferred by clause (a) of sub-section (1) of section 9 of the Indian Stamp Act, 1899 (2 of 1899), the Central Government hereby remits the duty with which the bonds in the nature of debentures and described as 9% (Tax-free) Rural Electrification Corporation Bonds-1999 of the value of rupees one hundred twenty crores only to be issued by the Rural Electrification Corporation Limited, are chargeable under the said Act.

[No. 27/89-Stamps/F. No. 33/28/89-ST]

आदेश

स्टाम्प

का.आ. 1465:—भारतीय स्टाम्प अधिनियम, 1899 (1899 का 2) की धारा 9 की उप-धारा (1) के खण्ड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करने हुए तथा भारत सरकार, वित्त मंत्रालय (राजस्व विभाग) के दिनांक 12-9-1988 स्टाम्प आदेश में 2813 के अধিকरण में केन्द्रीय सरकार एतद्द्वारा उस शुल्क को माफ करती है जो हाउसिंग एण्ड अवेन डेवलपमेंट कॉर्पोरेशन लि० नई दिल्ली द्वारा जारी किए जाने वाले सत्तर करोड़ पचास लाख रुपये मात्र मूल्य के "11.5% ऋणपत्र-2008 XXXI श्रृंखला" के रूप में यथा विनिर्दिष्ट ऋणपत्रों के स्वरूप के बंधपत्रों के कारण उक्त अधिनियम के अन्तर्गत प्रसार्य हैं।

[नं. 29/89-स्टाम्प/का.सं. 33/44/89-बि० कर]

ORDER

STAMPS

S.O. 1465.—In exercise of the powers conferred by clause (a) of sub-section (1) of section 9 of the Indian Stamp Act, 1899 (2 of 1899), and in supersession of the order of

the Government of India in the Ministry of Finance (Department of Revenue) No. S.O. 2813 dated 12-9-88 the Central Government hereby remits the duty with which the bonds in the nature of debentures described as "11.5% debentures—2008 XXXI Series" of the value of rupees twenty seven crores and fifty lakhs only to be issued by the Housing and Urban Development Corporation Limited, New Delhi are chargeable under the said Act.

[No. 28/89-Stamp-F. No. 33/44/88-ST]

घाटन

स्टाम्प

का.आ. 1466:—भारतीय स्टाम्प अधिनियम 1899 (1899 का 2) की धारा 9 की उपधारा (1) के खण्ड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा उस शुल्क को माफ करती है जो व्यक्तिगत पावर कारपोरेशन आफ इंडिया लि. नई दिल्ली द्वारा जारी किए जाने वाले 13% वार्षिक व्याज वाले (कर लगने योग्य) सात वर्षों के पश्चात् मोचनीय श्रेणी "ए" के तथा 9% वार्षिक व्याज वाले (कर मुक्त) 10 वर्षों के पश्चात् मोचनीय श्रेणी "बी" के रूप में वर्णित 1000 रुपये प्रत्येक के मूल्य वाले दो सौ करोड़ रुपये मात्र मूल्य के प्रामित्वरी नोटों के स्वतः के बन्धपत्रों पर उक्त अधिनियम के अनुवर्तन प्रमाण्य है।

[सं. 31/89-स्टाम्प-फा. सं. 33/24/89 बि. कर.]
बी. प्रार. मेहमी, अधवर सचिव

ORDER

STAMPS

S.O. 1466.—In exercise of the powers conferred by clause (a) of sub-section (1) of section 9 of the Indian Stamp Act, 1899 (2 of 1899), the Central Government hereby remits the duty with which the bonds in the nature of promissory note described as category 'A' Bonds carrying interest at 13% p.a. (taxable) redeemable after 7 years and category 'B' Bonds carrying interest at 9% p.a. (tax free) redeemable after 10 years of Rs. 1000 each to the value of rupees two hundred crores only to be issued by Nuclear power Corporation of India Limited New Delhi are chargeable under the said Act.

[No. 31/89-Stamp-F. No. 33/24/89-ST]

B. R. MEHMI, Under Secy.

(व्यय विभाग)

नई दिल्ली, 29 मई, 1989

का.आ. 1467:—सरकारी भवन (अतिरिक्त दखलदारों की वेदखली) अधिनियम, 1971 (1971 का 40) की धारा 3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा वित्त मंत्रालय (व्यय विभाग) में भारत सरकार की अधिसूचना संख्या का. आ. 1309, दिनांक 12 अप्रैल, 1981 में निम्नलिखित संशोधन करती है, अर्थात्:—

उक्त अधिसूचना की सारणी में क्रम संख्या 1 और तत्संबंधी प्रविष्टियों के स्थान पर निम्नलिखित क्रम संख्या और प्रविष्टियां प्रतिस्थापित की जाएगी, अर्थात्:—

- | | |
|----------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------|
| 1. बरिष्ठ उप महालेखाकार/
उप महालेखाकार (प्रशासन)
महालेखाकार (ए एण्ड ई)
का कार्यालय उड़ीसा, भुवनेश्वर। | महालेखाकार (ए एण्ड ई) उड़ीसा,
भुवनेश्वर के प्रशासनिक नियंत्रण-
धीन सरकारी भवन। |
|----------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------|

[एफ. संख्या ए-11013/84-ई जी -1]
डी. त्यागेश्वरन, अधवर सचिव

(Department of Expenditure)

New Delhi, the 29th May, 1989

S. O. 1467. - In exercise of the powers conferred by section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (40 of 1971), the Central Government hereby makes the following amendment in the notification of the Government of India in the Ministry of Finance (Department of Expenditure) No. S.O. 1369 dated the 23rd April, 1980, namely:—

In the Table to the said notification, for serial number 1 and the entries relating thereto, the following serial number and entries shall be substituted, namely:—

- | | |
|------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------|
| "1. Senior Deputy Accountant General/Deputy Accountant General (Administration), Office of the Accountant General (A&E), Orissa, Bhubaneswar." | Public Premises under the administrative control of the Accountant General (A&E), Orissa, Bhubaneswar." |
|------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------|

[F. No. A-11013/1/84-EG.I]

D. THYAGESWARAN, Under Secy.

(प्राधिकार्य विभाग)

(बैंकिंग प्रभाग)

नई दिल्ली, 29 मई, 1989

का.आ. 1468:—बैंकिंग विधिमन अधिनियम, 1949 (1949 का 10) की धारा 53 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार, भारतीय रिजर्व बैंक की सकारिण पर, एतद्वारा यह घोषणा करती है कि उक्त अधिनियम की तृतीय अनुसूची में फार्म "क" के साथ संलग्न टिप्पणी (ख) के उपबंध निम्नलिखित बैंकों पर, जहाँ तक उनका संबंध 31 मार्च, 1989 को उनके तुलनपत्रों से है, लागू नहीं होंगे:

- यूनिजन बैंक आफ इंडिया
- वैस्य बैंक लिमिटेड

[सं. 15/2/89-बी. ओ.-III]

प्राणनाथ, अधवर सचिव

(Department of Economic Affairs)

(Banking Division)

New Delhi, the 29th May, 1989

S.O. 1468.—In exercise of the powers conferred by section 53 of the Banking Regulation Act, 1949 (10 of 1949), the Central Government, on the recommendation of the Reserve Bank of India, hereby declares that the provisions of Note (f) appended to the Form 'A' in the Third Schedule to the said Act shall not apply to the following banks, namely:—

- Union Bank of India
- Vysya Bank Limited

in respect of their balance sheet as at the 31st day of March, 1989.

[No. 15/2/89-B.O. III]

PRAN NATH, Under Secy.

नई दिल्ली, 8 जून, 1989

का.आ. 1469:—राष्ट्रीय बैंक (प्रबंध और प्रकीर्ण उपबंध) स्कीम, 1970 के खण्ड 8 के उपखण्ड (i) के साथ पठित खण्ड 3 के उपखण्ड (क) के अनुसरण में, केन्द्रीय सरकार एतद्वारा भारतीय रिजर्व बैंक से परामर्श करने के पश्चात् कार्यभार ग्रहण करने की तारीख से 22-1-1993 तक की अवधि के लिए श्री बी.के. मुखर्जी, वर्तमान महा-प्रबंधक, बैंक आफ बड़ौदा को युनाइटेड बैंक आफ इंडिया के पूर्णकालिक

निदेशक (कार्यकारी निदेशक के रूप में पदनामित) के रूप में नियुक्त करती है।

[संख्या एफ 9/56/88-बी सी.-1]

एम. एम. सीतारामन, अवर सचिव

New Delhi, the 8th June, 1989

S.O. 1469.—In pursuance of sub-clause (a) of clause 3 read with sub-clause (1) of clause 8 of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970, the Central Government, after consultation with the Reserve Bank of India, hereby appoints Shri B. K. Mukherjee presently General Manager, Bank of Baroda as a whole-time Director (designated as the Executive Director) of United Bank of India commencing from the date of his taking charge and ending with 22-1-1993.

[No. F. 9/56/83 BO. J]

M. S. SEETHARAMAN, Under Secy.

वाणिज्य मंत्रालय

नई दिल्ली, 10 जून, 1989

का.भा. 1470—केन्द्रीय सरकार, निर्यात (क्वालिटी नियंत्रण और निरीक्षण) अधिनियम, 1963 (1963 का 22) की धारा 17 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, बासमती चावल का निर्यात (निरीक्षण) नियम, 1980 का संशोधन करने के लिए निम्नलिखित नियम बनाती है, अर्थात् :—

1. (1) इन नियमों का संक्षिप्त नाम बासमती चावल का निर्यात (निरीक्षण) संशोधन नियम, 1989 है।

(2) ये राजपत्र में प्रकाशन की तारीख को प्रवृत्त होंगे।

2 बासमती चावल का निर्यात (निरीक्षण) नियम, 1980 के नियम 6 के स्थान पर निम्नलिखित नियम रखा जाएगा, अर्थात् :—

“6. निरीक्षण फीस—परेषण के संबंध में परेषणवार निरीक्षण के पीछे पर्यन्त निशुल्क मूल्य के 0.4 प्रतिशत की दर से तथा उत्पादन के दौरान उन मूनिटों के संबंध में जो क्वालिटी नियंत्रण प्रणाली के अधीन रहते हुए, निरीक्षण अधिकरण को पीछे पर्यन्त निशुल्क मूल्य के 0.2 प्रतिशत की दर से निरीक्षण फीस इन नियमों के अधीन दी जाएगी।

“टिप्पण :—(निर्यातकर्ता द्वारा प्रत्येक परेषण के लिए संदेय निरीक्षण फीस की रकम निकटतम रूप में पूर्णांकित की जाएगी और इस प्रयोजन के लिए, जहाँ ऐसी रकम में पैसे के रूप में रूप का भाग है यदि ऐसा भाग 50 पैसे या उससे अधिक है, वहाँ उसे एक रूप तक बढ़ा दिया जाएगा और यदि ऐसा भाग 50 पैसे से कम है तो उसे गिनती में नहीं लिखा जाएगा।”

[फाइल सं. 6(13)/87-ईआईएंडईपी]

ए.के. चौधरी, निदेशक

टिप्पण :—मूल नियम का.भा. 1026 तारीख 19-4-1980 द्वारा प्रकाशित किए गए थे और का.भा. 3916, 1983 द्वारा संशोधित किए गए थे।

MINISTRY OF COMMERCE

New Delhi, the 10th June, 1989

S.O. 1470.—In exercise of the powers conferred by section 17 of the Export (Quality Control and Inspection) Act, 1963 (22 of 1963), the Central Government hereby makes the following rules to amend the Export of Basmati Rice (Inspection) Rules, 1980, namely :—

1. (1) These rules may be called the Export of Basmati Rice (Inspection) Amendment Rules, 1989.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Export of Basmati Rice (Inspection) Rules, 1980, for rule 6, the following rule shall be substituted, namely :—

“6. Inspection fee—A fee at the rate of 0.4 percent of the f.o.b. value of the consignment in the case of consignmentwise inspection and at the rate of 0.2 percent of f.o.b. value of the consignment in the case of units coming under in-process quality control system shall be paid to the inspection agency as inspection fee under these rules.

“Note—The amount inspection fee for each consignment payable by the exporter shall be rounded off to the nearest rupee and, for this purpose, where such amount contained a part of rupee, consisting of paise, then, if such part is fifty paise or more, it shall be increased to one rupee and if such part is less than fifty paise, it shall be ignored.”

[F. No. 6(13)/87-EI&EP]

A. K. CHAUDHURI, Director

Footnote—Principal rules were published vide S.O. 1026 dated 19-4-1980 and amended by S.O. 3916 of 1983.

उद्योग मंत्रालय

(कम्पनी कार्य विभाग)

नई दिल्ली, 15 मई, 1989

का.भा. 1471.—एकाधिकार तथा अवरोधक व्यापारिक व्यवहार अधिनियम, 1969 (1969 का 54) की धारा 26 की उपधारा (3) के अनुसरण में केन्द्रीय सरकार एतद्वारा इस अधिसूचना के अनुलग्नक में उल्लिखित उपक्रमों के पंजीकरण के निरस्तीकरण को अधिसूचित करती है, क्योंकि उक्त उपक्रम ऐसे उपक्रमों में से हैं जिन पर उक्त अधिनियम के अध्याय 3 के भाग क अध्याय के उल्लेख अब लागू नहीं होते हैं।

[सं. 16/9/89-एम0-II]

अधिसूचना संख्या 16/9/89-एकाधिकार-3 के साथ सलग्न अनुलग्नक

क्रम सं.	उपक्रम का नाम	पंजीकृत कार्यालय	पंजीकरण संख्या
1.	मिथ फेब्रिकेशन प्राइवेट लिमिटेड	1-मो ब्रुलकन इन्स्योरेंस बिल्डिंग, वीर नारीमन रोड, बम्बई-400020	1988/84
2.	मोटेला निटवियंग लिमिटेड	रेशम भवन, 78-वीर नारीमन रोड बम्बई-400020	1953/84

MINISTRY OF INDUSTRY

(Department of Company Affairs)

New Delhi, the 15th May, 1989

S.O. 1471.—In pursuance of Sub-section (3) of Section 26 of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969), the Central Government hereby notifies the cancellation of the registration of the undertakings mentioned in the Annexure to this notification, the said undertaking being undertakings to which the provisions of Part A Chapter III of the said Act no longer apply.

[No. 16/9/89-M.III]

Annexure to the Notification No. 16/9/89-M. III

Sl. No.	Name of the undertaking	Registered Office	Registration Number
1	2	3	4
1.	M/s. Synth Fabrics Private Limited.	4-C, Vulcan Insurance Building, Veer Nariman Road, Bombay-400020.	1998/84
2.	M/s. Modella Knitwear Private Limited	Resham Bhawan, 78, Veer Nariman Road, Bombay-400020.	1953/84

का.आ. 1472.—एकाधिकार तथा अवरोधक व्यापारिक व्यवहार अधिनियम, 1969 (1969 का 54) की धारा 2 की उपधारा (3) के अनुसरण में केन्द्रीय सरकार एतद्वारा इस अधिसूचना के अनुलग्नक में उल्लिखित उपक्रमों के पंजीकरण के निरस्तीकरण को अधिसूचित करती है, क्योंकि उक्त उपक्रम ऐसे उपक्रमों में से हैं जिन पर उक्त अधिनियम के अध्याय-3 के भाग क अध्याय के उपबन्ध अब लागू नहीं होते हैं।

[सं. 16/9/89-एम. III]

अधिसूचना संख्या 16/9/89-एम-3 के साथ संलग्न अनुलग्नक

क्रम सं०	नीचे दिए नाम	पंजी० कार्यालय	पंजीकृत संख्या
2	3	4	
1.	कोरन बिजनेस सिस्टम्स लि.	"कोरेस हाऊस", प्लॉट नं. 10, कार्यालय डा. ई. मोसेज रोड, वरली, बम्बई-400018	2206/85
2.	डीको (इंडिया) लि.	-यथोपरि-	2202/85

S.O. 1472.—In pursuance of Sub-section (3) of Section 26 of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969), the Central Government hereby notifies the cancellation of the registration of the undertakings mentioned in the Annexure to this notification the said undertakings being undertakings to which the provisions of Part A Chapter III of the said Act no longer apply.

[No. 16/9/89-M.III]

Annexure to the Notification No. 16/9/89-M. III

Sl. No.	Name of the undertaking	Registered Office	Registration Number
1	2	3	4
1.	M/s. Deeko (India) Limited.	'Kores House' Plot No. 10, Dr. E. Moses Road, Worli, Bombay-400018.	2202/85
2.	M/s. Koran Business Systems Limited.	-do-	2206/85.

नई दिल्ली, 22 जून, 1989

का.आ. 1473.—एकाधिकार तथा अवरोधक व्यापारिक व्यवहार अधिनियम, 1969 (1969 का 54) की धारा 2 की उपधारा (3) के अनुसरण में केन्द्रीय सरकार एतद्वारा यूनाइटेड कार्बन इंडिया लिमिटेड जिसका पंजीकृत कार्यालय एन.के.एम. इंटरनेशनल हाउस, बाबूभाई मार्ग, बम्बई-400020 में है, के पंजीकरण के निरस्तीकरण को अधिसूचित करती है, क्योंकि उक्त उपक्रम ऐसे उपक्रमों में से है जिन पर उक्त अधिनियम के भाग "क" अध्याय-3 के उपबन्ध अब लागू नहीं होते। (पंजीकरण संख्या 682/70)।

[सं. 16/9/89-एम-III]

शशि भूषण सिंह, उप सचिव

New Delhi, the 2nd June, 1989

S.O. 1473.—In pursuance of Sub-section (3) of Section 26 of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969), the Central Government hereby notifies the cancellation of the registration of M/s. United Carbon India Limited, having its registered Office at N.K.M. International House Babubhai M. Chinai Marg, Bombay-400020 the said undertaking being undertaking to which the provisions of part A Chapter III of the said Act no longer apply.

(Registration No. 682/70)

[No. 16/9/89-M.III]

S. B. SINGH, Dy. Secy.

(नरराण, ऊर्जा विभाग)

बम्बई, 5 मई, 1989

का.आ. 1474.—केन्द्रीय सरकार, सरकारी स्थान (अप्राधिकृत अधिसूचनाओं की वेदखली) अधिनियम, 1971 (1971 का 40) की धारा 3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, और निर्माण तथा आवास मंत्रालय, भारत सरकार के तारीख 15 दिसम्बर, 1965 के सा.आ. संख्या 3944 को अधिकांत करते हुए केवल उन कार्यों को छोड़कर जो इस तरह के अधिकांत से पहले किए गए अथवा किए जाने हेतु छोड़ दिए गए, भासा परमाणु अनुसंधान केन्द्र, ट्राम्बे, बम्बई के उप स्थापना अधिकारी को जो सरकार के राजपत्रित अधिकारी हैं, भासा परमाणु अनुसंधान केन्द्र, ट्राम्बे, बम्बई के प्रशासनिक नियंत्रण के अधीन बम्बई अथवा वाशी, न्यु बम्बई में खरीदे गए, पट्टे पर दिए गए अथवा किराए पर दिए गए स्थानों के सम्बन्ध में उक्त अधिनियम के प्रयोजनों के लिए सम्पदा अधिकारी नियुक्त करनी है।

[फाइल संख्या 25/12/85 (बीएआरसी)]

ई. रामाकृष्णन, अब

DEPARTMENT OF ATOMIC ENERGY

Bombay, the 5th May, 1989

S.O. 1474.—In exercise of the powers conferred by section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (40 of 1971), and in supersession of the notification of the Government of India in the Ministry of Works and Housing notification No. S.O. 3944 dated the 15th December, 1965, except in respect of things done or omitted to be done before such supersession, the Central Government hereby appoints the Deputy Establishment Officer, Bhabha Atomic Research Centre, Trombay, Bombay, being a gazetted officer of the Government, to be the Estate Officer for the purposes of the said Act in respect of the premises purchased, leased or rented in Bombay and Vashi, New Bombay under the administrative control of Bhabha Atomic Research Centre Trombay, Bombay.

[F. No. 25/12/85(BARC)/R]

E. RAMAKRISHNAN, Under Secy.

मानव संसाधन विकास मंत्रालय

(संस्कृति विभाग)

नई दिल्ली, 1 जून, 1989

का. आ. 1475.—केन्द्रीय सरकार राजभाषा (संघ के सरकारी प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उपनियम (4) के अनुसरण में मानव संसाधन विकास मंत्रालय (संस्कृति विभाग) के अधीन निम्न-लिखित कार्यालयों को, जिनके 80 प्रतिशत से अधिक कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है:—

1. राष्ट्रीय मानव संग्रहालय,
पोस्ट-बैग-7, ई-5 अररा कॉलोनी,
तवा हाउसिंग बोर्ड कॉम्प्लेक्स,
भोपाल-462016.
2. साहित्य अकादमी,
रवीन्द्र भवन, 35, फिरोजशाह मार्ग,
नई दिल्ली-110001.
3. दिल्ली पब्लिक लाइब्रेरी,
श्यामा प्रसाद मुखर्जी मार्ग,
दिल्ली-110006.
4. गांधी स्मृति एवं दर्शन समिति,
गांधी स्मृति, 5 तीस जनवरी मार्ग,
नई दिल्ली-110011.
5. राष्ट्रीय सांस्कृतिक सम्पदा संरक्षण अनुसंधानशाला,
सेक्टर ई/3, अलीगंज योजना,
लखनऊ-226020

[सं. एफ 28-5/89-सामान्य]

अम्बिका खटुआ, उप सचिव

MINISTRY OF HUMAN RESOURCE DEVELOPMENT

(Department of Culture)

New Delhi, the 1st June, 1989

S.O. 1475.—In pursuance of sub-rule 4 of rule 10 of the Official Languages (Use for Official Purposes of the Union) Rules, 1976, the Central Government hereby notifies the following Offices under the administrative control of Ministry of Human Resource Development (Department of

Culture) more than 80% of staff of which have acquired working knowledge of Hindi :—

1. Rashtriya Manav Sangrahalaya,
P.B. No. 7, E-5 Arera Colony,
Tawa Housing Board Complex,
Bhopal-462016.
2. Sahitya Akademi,
Rabindra Bhavan,
35, Ferozeshah Road,
New Delhi-110001.
3. Delhi Public Library,
S.P. Mukherji Marg,
Delhi-110006.
4. Gandhi Smriti and Darshan Samiti,
Gandhi Smriti, 5 Tees January Marg,
New Delhi-110011.
5. National Research Laboratory for
Conservation of Cultural Property,
Sector E/3, Aliganj Scheme,
Lucknow-226020.

[F. No. 28-5/89-General]

AMBIKA KHATUA, Dy. Secy

अम मंत्रालय

नई दिल्ली, 24 मई, 1989

का. आ. 1476.—केन्द्रीय सरकार, कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 91क के साथ पठित धारा 88 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उक्त अधिनियम प्रवर्तन के से मैसर्स वैयक्तिक मापन उपयुक्त अभिकल्प संस्थान बम्बई में नियुक्त नियमित कर्मचारियों को 1-10-87 से 30-9-1991 तक की जिसमें यह दिनांक भी सम्मिलित है की अवधि के लिए छूट प्रदान करती है।

2. पूर्वोक्त छूट की शर्तें निम्नलिखित हैं, अर्थात्

- (1) पूर्वोक्त कारखाना, जिसमें कर्मचारी नियोजित है, एक रजिस्टर रखेगा, जिसमें छूट प्राप्त कर्मचारियों के नाम और पदविधान दिखाए जाएंगे;
- (2) इस छूट के होते हुए भी, कर्मचारी उक्त अधिनियम के अधीन ऐसी प्रसुविधाएं प्राप्त करते रहेंगे, जिनको पाने के लिए वे इस अधिसूचना द्वारा दी गई छूट के प्रवृत्त होने की तारीख से पूर्व सन्दर्भ अधिदायों के आधार पर हकदार हो जाते;
- (3) छूट प्राप्त अवधि के लिए यदि कोई अधिदाय पहले ही किए जा चुके हों तो वे वापस नहीं किए जाएंगे;
- (4) उक्त कारखाने का नियोजक, उस अवधि की बाबत, जिसके दौरान उस कारखाने पर उक्त अधिनियम प्रवर्तमान था (जिसे इसमें इसके पश्चात् "उक्त अवधि" कहा गया है), ऐसी विवरणियां ऐसे प्रारूप में और ऐसी विशिष्टियों सहित देगा जो कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 के अधीन उसे उक्त अवधि की बाबत देती थी;
- (5) निगम द्वारा उक्त अधिनियम की धारा 45 की उप-धारा (1) के अधीन नियुक्त किया गया कोई निरीक्षक या निगम का इस निमित्त प्राधिकृत कोई अन्य पदधारी :—

(i) धारा 44 की उपधारा (1) के अधीन, उक्त अवधि की बाबत दी गई किसी विवरणी की विशिष्टियों को सत्यापित करने के प्रयोजनार्थ।

(ii) यह अभिनिश्चित करने के प्रयोजनार्थ कि कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 द्वारा यथा संशोधित रजिस्टर और अभिलेख उक्त अवधि के लिए रखे गये थे या नहीं; या

(iii) यह अभिनिश्चित करने के प्रयोजनार्थ कि कर्मचारी नियोजक द्वारा दिये गए उन फायदों को, जिसके प्रतिकूल स्वरूप इस अधिसूचना के अधीन छूट दी जा रही है, नकद में और वस्तु रूप में पाने का हकदार बना हुआ है या नहीं; या

(iv) यह अभिनिश्चित करने के प्रयोजनार्थ कि उस अवधि के दौरान, जब उक्त कारखाने के सक्षम में अधिनियम के उपबन्ध प्रवृत्त थे, ऐसे किन्हीं उपबन्धों का अनुपालन किया गया था या नहीं;

निम्नलिखित कार्य करने के लिए सशक्त होगा:—

- (क) प्रधान या अध्यक्षित नियोजक से अपेक्षा करने कि वह उसे ऐसी जानकारी दे जिसे उपरोक्त निरीक्षक या अन्य पदधारी आवश्यक समझता है;
- (ख) ऐसे प्रधान या अध्यक्षित नियोजक के अधिभोगाधीन किसी कारखाने स्थापन, कार्यालय या अन्य परिसर में किसी भी उचित समय पर प्रवेश करना और उसके प्रभारी से यह अपेक्षा करना कि वह व्यक्तियों के नियोजन और मजदूरी के संशय में संबंधित ऐसे लेखा बहियाँ और अन्य दस्तावेज, ऐसे निरीक्षक या अन्य पदधारी के समक्ष प्रस्तुत करे और उनकी परीक्षा करते दे, या उन्हें ऐसी जानकारी दे, जिसे वह आवश्यक समझते हैं; या
- (ग) प्रधान या अध्यक्षित नियोजक की, उसके अधिकर्ता या सेवक की, या ऐसे किसी व्यक्ति की जो ऐसे कारखाने, स्थापन, कार्यालय या अन्य परिसर में पाया जाए, या ऐसे किसी व्यक्ति की जिसके बारे में उक्त निरीक्षक या अन्य पदधारी के पास यह विश्वास करते का युक्तियुक्त कारण है कि वह कर्मचारी है, परीक्षा करना; या
- (घ) ऐसे कारखाने, स्थापन, कार्यालय या अन्य परिसर में रखे गए किसी रजिस्टर, लेखाबही या अन्य दस्तावेज की नकल तैयार करना या उससे उद्धरण लेना।

[गंज्या एस-38014/10/87-एस.एस-1]

स्पष्टीकरण आपन

इस मामले में छूट को भूतलक्षी प्रभाव देना आवश्यक हो गया है क्योंकि छूट के आवेदन पर कार्यवाही करने में समय लगा था। किन्तु यह प्रमाणित किया जाता है कि छूट को भूतलक्षी प्रभाव देने में किसी भी व्यक्ति के हित पर प्रतिकूल प्रभाव नहीं पड़ेगा।

MINISTRY OF LABOUR

New Delhi, the 24th May, 1989

S.O. 1476.—In exercise of the powers conferred by section 88 read with section 91A of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby exempts the regular employees of the Institute for Design of Electrical Measuring Instruments, Bombay from the operation of the said Act for a period with effect from 1st October, 1987 upto and inclusive of the 30th September, 1991.

The above exemption is subject to the following conditions, namely:—

(1) The aforesaid factory wherein the employees are employed shall maintain a register showing the names and designations of the exempted employees;

(2) Notwithstanding this exemption, the employees shall continue to receive such benefits under the said Act to which they might have become entitled to on the basis of the contributions paid prior to the date from which exemption granted by this notification operates;

(3) The contributions for the exempted period, if already paid, shall not be refunded;

(4) The employer of the said factory shall submit in respect of the period during which that factory was subject to the operation of the said Act (hereinafter referred to as the said period), such returns in form and containing such particulars as were due from it in respect of the said period under the Employees' State Insurance (General) Regulations, 1950;

(5) Any inspector appointed by the Corporation under sub-section (1) of section 45 of the said Act, or other official of the Corporation authorised in this behalf shall, for the purpose of—

- (i) verifying the particulars contained in any return submitted under sub-section (1) of section 44 for the said period; or
- (ii) ascertaining whether registers and records were maintained as required by the Employees' State Insurance (General) Regulations, 1950 for the said period; or
- (iii) ascertaining whether the employees continue to be entitled to benefits provided by the employer in cash and kind being benefits in consideration of which exemption is being granted under this notification; or
- (iv) ascertaining whether any of the provisions of the Act had been complied with during the period when such provisions were in force in relation to the said factory be empowered to :—
 - (a) require the principal or immediate employer to furnish to him such information as he may consider necessary; or
 - (b) enter any factory, establishment, office or other premises occupied by such principal or immediate employer at any reasonable time and require any person found incharge thereof to produce to such inspector or other official and allow him to examine such accounts, books and other documents relating to the employment of persons and payment of wages or to furnish to him such information as he may consider necessary; or
 - (c) examine the principal or immediate employer, his agent or servant, or any person found in such factory, establishment, office or other premises or any person whom the said inspector or other official has reasonable cause to believe to have been an employee; or
 - (d) make copies of or take extracts from, any register, account book or other document maintained in such factory, establishment, office or other premises.

[File No. S-38014/10/87-SS.1]

EXPLANATORY MEMORANDUM

It has become necessary to give retrospective effect to the exemption in this case as the processing of application for exemption took time. However, it is certified that the grant of examination with retrospective effect will not affect the interest of anybody adversely.

सूचना

नई दिल्ली, 31 मई, 1989

का.आ. 1477.—भारत सरकार, श्रम मंत्रालय की अधिसूचना संख्या 3040 दिनांक 23 सितम्बर, 1988 में जो भारत के राजपत्र भाग-II खंड 3 (ii) में दिनांक 8 अक्टूबर, 1988 को पृष्ठ 3668 पर प्रकाशित की गई थी, क्रम संख्या 8 में "श्री भनवर लाल बफाला, सी.आई.टी.यू. वी-4 एम.एल.ए. क्वार्टर्स, जयपुर" के स्थान पर श्री भनवर लाल बापना सचिव, राजस्थान राज्य कमेटी, सी.आई. यू. वी-4 एम.एल.ए. क्वार्टर्स, जयपुर-302001 पढ़ा जाय।

[सं. 20012/3/86-एस.एस-II]

CORRIGENDUM

New Delhi the 31st May, 1989

S.O. 1477.—In the notification of the Government of India, Ministry of Labour S.O. No. 3040 dated the 23rd September, 1988 published in the Gazette of India Part-II, Section 3(ii) dated the 8th October, 1988 at page 3668 against Serial No. 8 for "Shri Bhanwar Lal Baphana, C.I.T.U., B-4, M.L.A. Quarters, Jaipur read Shri Bhanwar Lal Bapna, Secretary, Rajasthan State Committee of C.I.T.U., B-4, MLA Quarters, Jaipur-302001".

[No. V. 20012(3)/86-SS.II]

नई दिल्ली, 16 जून, 1989

का.आ. 1478.—भारत प्रोवैस एंड मेकेनिकल इन्जीनियर्स लिमिटेड ने, जो केन्द्रीय सरकार का प्रतिष्ठान है, उपदान संदाय अधिनियम, 1972 (1972 का 39), जिसे इस में इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 5 की उपधारा (2) के अधीन छूट के लिए आवेदन किया है;

और केन्द्रीय सरकार की राय में उक्त प्रतिष्ठान के कर्मचारियों को, जो कि बर्ड्स/हेल्गर्स अधिवर्षिता निधि के सदस्य हैं उपलब्ध पेंशन लाभ उक्त अधिनियम के अधीन प्रदत्त लाभों से कम नहीं है।

अतः अब, उक्त अधिनियम की धारा 5 की उपधारा (2) द्वारा श्रवितियों का प्रयोग करते हुए, केन्द्रीय सरकार उक्त प्रतिष्ठान के कर्मचारियों का, जो बर्ड्स/हेल्गर्स अधिवर्षिता निधि के सदस्य हैं, इस अधिसूचना के सरकारी राजपत्र में प्रकाशन की तारीख से उक्त अधिनियम के उपबन्धों से छूट देती है।

[सं. एस-70014/1/87-एसएस-II]

ए.के. भट्टाराई, अवसर सचिव

New Delhi, the 16th June, 1989

S.O. 1478.—Whereas the Bharat Process and Merchandise Engineers Limited, an establishment of the Central Government, has applied for exemption under sub-section (2) of Section 5 of the Payment of Gratuity Act, 1972 (39 of 1972), (hereinafter referred to as the said Act);

And whereas in the opinion of the Central Government the pensionary benefits receivable by the employees of the said establishment who are members of the Birds/Helgers Superannuation Fund, are not less favourable than the benefits conferred under the said Act.

Now, therefore, in exercise of the powers conferred by sub-section (2) of Section 5 of the said Act, the Central Government hereby exempts the employees of the said establishment who are members of the Birds/Reilgers Superannuation Fund, from the operation of the provisions of the 1629 GI/89—2

said Act from the date of publication of this notification in the Official Gazette.

[No. S-70014/1/87-SS.II]

A. K. BHATTARAI, Under Secy.

नई दिल्ली, 31 मई, 1989

का.आ. 1479.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, बम्बई मरकेन्टाईल को-ऑपरेटिव बैंक लि. के प्रबन्धतन्त्र से सम्बन्ध नियोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, सं. 2 बम्बई के पंचाट को प्रकाशित करती है।

New Delhi, the 31st May, 1989

S.O. 1479.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. 2, Bombay as shown in the Annexure in the Industrial dispute between the employers in relation to the Bombay Mercantile Cooperative Bank Ltd. and their workmen.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2 BOMBAY

Reference No. CGIT-2/19 of 1986

PARTIES :

Employers in relation to the Management of Bombay Mercantile Cooperative Bank Ltd..

AND

Their Workmen

APPEARANCES :

For the Employers : Shri S. M. Patel, Advocate

For the Workmen : Shri J. G. Gadkeri, Advocate.

INDUSTRY : Banking

STATE : Maharashtra

Bombay, dated 5-1-1989

AWARD

The Central Government by their Order No. L-12012/14/85-D.IV(A) dated 19-5-1986, have referred the following industrial dispute to this Tribunal for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947 :—

"Whether the action of the management of Bombay Mercantile Cooperative Bank Ltd. in relation to its Kurla Branch in the dismissal of Shri M. U. Qureshi, a senior clerk w.e.f. 10-4-84 is justified? if not, to what relief the workmen concerned is entitled?"

2. The case of the Bombay Mercantile Cooperative Bank Employees' Union of which the workman Shri M. U. Qureshi is a member, as disclosed from its statement of claim (Ex. 2/W), in the short is thus :—

1. Shri Qureshi was working as a Senior Clerk at Kurla Branch of the Bank during the years 1973 to 1982. While he was working as a Cashbook Writer and Supervisor of Loan Department, which work used to keep him busy for the whole day, he was also then asked to work as in-charge of Safe Deposit Vault.

As a part of the said work, he was asked to accept the rents of Lockers and to issue the necessary receipts and credit the amount to the Bank. As Shri Qureshi was very busy with other work, he was finding it difficult to divert his attention to the said other work. Therefore, the Agent of the Branch had instructed him to accept the money and to issue the necessary receipts, but to credit the amount to the Bank as early as possible as per his convenience. Due to

this concession given to him by the Branch Manager, there used to be delays in crediting the amount to the Bank. Shri Qureshi used to keep the amount during the intervening period in the Cash Book kept in the Cupboard in the branch itself. This took place sometime in the month of July/August, 1981. In October, 1981 he was transferred from Kurla to Byculla branch. In the meantime internal audit took place and by the report of the Audit in 1982, the delays caused in depositing the amounts were pointed out. Therefore, the Bank issued a chargesheet dated 20-4-1983 i.e. nearly after two years against him. It was alleged against him that he had tried to misappropriate the amounts received from certain three customers, and that he had committed the temporary misappropriation of the rent amounts of the Lockers by delaying the crediting of the amount to the Bank by about two weeks. No opportunity was given to Shri Qureshi to submit his explanation before the enquiry was held against him. The enquiry was held against him from 10-8-1983 to 5-10-1983. The vouchers in question were not produced in the enquiry proceedings. Rules of Natural Justice were not followed in the said enquiry conducted against him. The findings of the Enquiry Officer are improper and even perverse. The punishment of dismissal imposed upon him by the Bank is also highly disproportionate to the charge levelled against him. The Bank management had not taken into consideration his long service and clean record before the said order was passed against him. Therefore, the union has prayed for setting aside the order of dismissal passed against Shri Qureshi, and further prayed for his reinstatement with full back wages.

3. The Bank by its written statement (Ex. 3[M]) denied all the allegation against it and in substance contended thus :—

Shri Qureshi was working as a Cash Book writer at Kurla Branch and was incharge of State Deposit Vault. He had committed several irregularities amounting to misappropriation of the funds received by him towards rent of the said Safe Deposit Vault Lockers from different customers of the Bank. These irregularities came to the notice as a result of internal audit and the reports submitted in the year 1981-82 and 1983. After the receipt of these reports of Internal Auditor, the Bank issued a chargesheet to the said workman Shri Qureshi, after he was given an opportunity to submit his say before issuing the chargesheet. The enquiry held against him was conducted in a just and fair manner and the principles of natural justice were properly followed. He was allowed to be defended by the General Secretary of the Union on his behalf. The findings of the Enquiry Officer are just and proper. The findings of the Enquiry Officer were duly considered by the Disciplinary Authority, and after the said workman was duly heard the order of dismissal was passed against him. The appeal filed against that order was also dismissed by the Board of Directors. Then Bank then denied that the said workman had a clean record in the past. It is also denied that the workman was over worked and hence was unable to attend to the deposit of payments received towards rent of the said Safe Deposit Vault from the Customers. It also denied that the Agent had asked him to deposit the rent amount as per his convenience. The say of the workman that he used to keep the collected amount in the Cash Box in the cupboard in the Bank is denied, and it is contended that the misappropriation used to be committed concerning those amounts. Certain vouchers could not be produced in the enquiry proceeding as they were destroyed due to flooding. The Bank lastly contended thus :—The Bank which accepts deposits from the public is a trustee of the public funds, and as such it must respect the confidence reposed by the customers by safeguarding their funds by giving

ing them prompt and diligent service with honesty and integrity. If the Bank permits its employees to misappropriate any of the funds received by them from the customers, the image of the Bank in the eyes of the public will fall, and its credibility would be destroyed. In these circumstances the order of dismissal passed by the Bank is quite proportionate to the charge levelled against the workmen. The Bank therefore contended that the prayer of the said union be rejected.

4. The issues framed on the above said pleadings at Ex. 4 are :—

- (1) Whether no opportunity was given to the workman Shri M. U. Qureshi to give his say, before the inquiry was started against him ?
- (2) Whether the inquiry held against the said workman was not held properly, and the rules of natural justice were not followed ?
- (3) Whether the findings of the Inquiry Officer are improper/perverse ?
- (4) Whether the action of management of Bombay Merchantile Cooperative Bank Ltd., in relation to its Kurla Branch in the dismissal of Shri M. U. Qureshi, a senior clerk w.e.f. 10-4-84 justified ?
- (5) If not, to what relief the said workman is entitled ?
- (6) What award ?

5. My findings on the above said issues are :—

- (1) Opportunity was given.
- (2) Inquiry was held properly and the rules of natural justice were followed.
- (3) No
- (4) No
- (5) As per Award.
- (6) As per order below.

REASONS

Issues Nos. 1, 2 and 3

6. No oral evidence was led by either of the parties. Only the arguments were advanced by the learned Advocate of both the parties. It is contended in the statement of claim filed on behalf of the workmen that no opportunity was given to the workmen Shri Qureshi to submit explanation before the enquiry was held against him, and that the enquiry held against him was not held properly and the rules of natural justice were not followed. The burden of proving these two issues upon the workman/union. As noted above, no oral evidence was led on behalf of the union any issue. At the time of arguments, the learned Advocate for the Union Shri Gadkari stated that the contentions on Issues Nos. 1 and 2 are not pressed by him and he conceded that the enquiry held against the workmen was held properly and the rules of natural justice was held properly followed. Therefore, the findings on Issue No. 1 is that proper opportunity was given to the workman to give his say before the enquiry was started against him, and my finding on Issue No. 2 is that the enquiry was held properly and the rules of natural justice were properly followed. The learned Advocate for the Union argued only on the quantum of punishment. I, therefore, find that the findings of the enquiry officer regarding the enquiry held by him, are proper and are not improper and perverse. Issue No. 3 is found Accordingly.

Issue No. 4

7. Issue No. 4 is whether the action of management of the said Bank in dismissing the workman Shri M. U. Qureshi is justified. According to the learned Advocate for the Union, the said action taken by the Bank is not justified, and that the punishment imposed by the Bank upon the workman Shri Qureshi is too disproportionate to the charges levelled

against him. According to the learned Advocate for the Bank Shri Patel, the action taken by the Bank in the matter is justified and proper, and the punishment imposed upon the workman Shri Qureshi is in consonance with the charges levelled against him. Therefore, we will now note the charges levelled against the workman Shri Qureshi. It is alleged against him that while he was working as a Senior Clerk at Kurla Branch of the Bank, he was also in-charge of Safe Deposit Vault. He used to receive the amounts of rent in respect of Lockers from the Locker holders of the Safe Deposit Vault. However, he was not depositing the respective amounts immediately on the same day with the Cashier of the Bank, but that the amounts were being deposited with the Bank after a lapse of time. In one case he had received the rent of Rs. 25/- and he did not at all deposit the amount and this came to the notice of the Bank after the report of the Internal Auditor was received.

It will be seen from the chargesheet dated 20-4-1983 issued against the said workman that in as many as 23 cases he had received the amounts of Rs. 25/- from each of the different Locker holders but he did not deposit the amount immediately with the Cashier of the Bank on the same day, and that the amounts were deposited by him after about one to three weeks. As noted above, in one case he had received the amount of Rs. 25/-, but he did not deposit the amount with the Cashier at all. Later this amount was recovered from the workman Shri Qureshi.

8. According to the workman Shri Qureshi, as he was over-burdened with his regular work, the delay used to be caused on his part in depositing the amounts with the Cashier of the Bank. Further, according to him, he was told by the Branch Manager of the Bank to deposit the amounts as per his convenience. Now, from the record I find that Shri Qureshi was not over-burdened by the said additional work. Further he was being paid an additional amount of Rs. 15/- per month for the said extra work and that the said additional duty was not foisted upon him, but that he himself willingly had accepted it. Further, the concerned Branch Manager stated in his evidence before the enquiry Officer that he had never told the said workman to deposit the amounts as per his evidence, and denied the suggestion of the workman in that respect. I, therefore, find that the workman Shri Qureshi was not over-burdened with the said additional work, and that the delay in depositing the amounts used to be caused due to the fault on his part only, and not because of oral directions given to him by any authority in that respect.

8. Even then I find that the punishment of dismissal imposed upon the said workman is too harsh as compared to the charges levelled against him. Though the delay of one to three weeks used to be caused in depositing the amounts, the amounts were actually deposited by him. Each amount was about Rs. 25/- or so. In a very few cases, the amount was more than Rs. 50/-. Only in one case he did not deposit the amount of Rs. 25/- with the Cashier of the Bank. According to the workman, he had not purposely avoided depositing the amounts with the Cashier, but only through mistake and loss of memory he had failed to deposit that amount with the Cashier of the Bank. While awarding the punishment and deciding the quantum of punishment, the post service record of the employee is also to be taken into consideration, and it is to be seen whether there are any mitigating and aggravating circumstances in the matter. Even though the past service record was placed before the Enquiry Officer, it is not the case also of the Bank that the said workman had any bad record in the past. No material had any bad record in the past. Therefore, according to him had any bad record in the past. Therefore, according to him the Bank should not have straightway dismissed him from service.

9. It was urged on behalf of the management that in a institution like Bank wherein the customers have complete faith in the working of the Bank. It cannot afford to continue with dishonest employees in the service, otherwise the customers will lose faith in the banking institution. It was further urged on their behalf that the Court would have sympathy with the employee who is going to lose his employment, but in certain cases the Court's sympathy would be

misplaced, and may result in rendering injustice to the Bank, and that by the Court order the dishonest of the employee should not be encouraged. It is true that there is every substance in the said argument of the Bank Management. However, while awarding the punishment, the other circumstances are also to be taken into consideration. Even though the Enquiry Officer came to the conclusion of the act of misappropriation on the part of the said workman amounting to gross-misconduct on his part and as such he deserved the punishment of dismissal, in my opinion, the Bank should not have straightway dismissed the workman from service and should have awarded some lesser punishment. It is an admitted fact that the workman Shri Qureshi had put in 13 years of service before the date of dismissal from service. As he had no bad record it must be said that his past record was normal. Even though technically he is guilty of attempting to commit misappropriation of about Rs. 25/- on each occasion about 25 times, it cannot be said that in fact he had misappropriated or attempted to misappropriate them by using them for his own use. It may be said that he was not quite diligent in the discharge of his duty, and as such he was idle in depositing the said amount with the Cashier of the Bank. It is true that in one case the delay caused in depositing the amount was more than 61 days. Further in one other case he had not at all deposited the amount of Rs. 25 with the Cashier. In that case the explanation of the workman that through mistake he failed to deposit that amount with the Cashier, may also be accepted. As he was not quite diligent in the discharge of his duties, the necessary and appropriate punishment must be imposed on him. However, the punishment of dismissal imposed by the management is too harsh and disproportionate to the said acts of the workman. The instances of the alleged temporary misappropriation of the amounts took place during the year 1981, through he was in the service of the Bank from 1971. Therefore, taking into consideration the gravity of the misconduct, his past record, and the other aggravating and mitigating circumstances, I find that the order of dismissal passed by the Bank is not justified. Issue No. 4 is answered accordingly.

Issue No. 5

10. The relief that can be awarded in this case is that the workmen be directed to be reinstated in service, but without back wages but with continuity of service. Hence the following Award is passed.

Issue No. 6

AWARD

The action of the Bank management in dismissing Shri M. U. Qureshi from service is not justified. That order is set aside.

The management of Bombay Merchantile Co-operative Bank Ltd. is hereby directed to reinstate Shri M. U. Qureshi in service without back wages but with continuity of service. The parties to bear their own costs of this reference.

P. D. APSHANKAR, Presiding Officer

[No. L-12012/141/85-D.IV(A)]

नई दिल्ली, 12 जून, 1989

का.आ. 1480.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, मेसर्स भारत कोकिंग कोल लिमिटेड की बनीदीह कोलियरी के प्रबन्धन से सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, (सं. 1) धनबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-6-1989 को प्राप्त हुआ था।

New Delhi, the 12th June, 1989

S.O. 1480.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal (No. 1), Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the management of Benedih Colliery of M/s. Bharat Coking

Coal Ltd. and their workmen, which was received by the Central Government on the 2-6-1989.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, DHANBAD

In the matter of a reference under section 10(1)(d) of the Industrial Disputes Act, 1947.

Reference No. 46 of 1984

PARTIES :

Employers in relation to the management of Benedih Colliery of Messrs Bharat Coking Coal Ltd.

AND

Their Workmen

APPEARANCES :

For the Employers—Shri B. Joshi, Advocate.

For the Workmen—Shri J. P. Singh, Advocate.

STATE : Bihar.

INDUSTRY : Coal.

Dated, the 25th May, 1989

AWARD

By Order No. L-20012(154)/84-D.III(A), dated, the 28th July, 1984 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :—

“Whether the action of the management of Benedih Colliery of Messrs Bharat Coking Coal Limited in not providing job to Shri Bageswar Singh, Tub Checker from 6-4-73 without assigning any reasons is justified ? If not, to what relief is this workman entitled?”

2 The case of the management of Benedih Colliery of M/s. Bharat Coking Coal Ltd., as appearing from the written statement submitted, details apart, is as follows :

The present reference is not legally maintainable it is arising out of non acceptance of alleged demand of the concerned person Bageswar Singh on 6-4-73. It is difficult to preserve all the documents for more than 12 years and to enquire the matter from the officers who have already been transferred. It is unfortunate that such stale and belated claim has been entertained and the public sector is put to serious disadvantages to rebut concocted allegations. There was no workman by the name of Bageswar Singh at Benedih Colliery prior to take over of the management by the Central Government with effect from 31-1-73. Benedih Colliery was a non-coking coal mine and it was nationalised with effect from 1-5-73. After nationalisation of non-coking coal mines, Benedih colliery was amalgamated. The concerned workmen claims that he was a workman of Pure Jairamdih Colliery. Pure Jairamdih Colliery was a non-coking coal mine and its management was taken over by the Custodian with effect from 31-1-73. The concerned workman claims that during the period from 31-1-73, the date of take over, to 1-5-73, the date of nationalisation, he demanded job of Tub Checker at Jairamdih Colliery, but he was not provided with the job from 6-4-73. After nationalisation of coking coal mines with effect from 1-5-72, it was anticipated that the coal industry was to be operated by public sector. Many persons having connections with the coal industry in some form or other tried to get their friends, relatives and favourites inducted in to the service of the management of different collieries. The Custodian, after taking charge of the coal mines, appointed screening committees to examine all the cases of inductions and on the basis of reports, all the inductees were not allowed to continue in the employment. Many such persons raised industrial disputes through different unions and all such matters were finally resolved and the actions of stoppage of inductees were held to be legal and justified. The concerned along with others raised industrial dispute in 1974 through his union and

the Ministry after finding the case to be an induction did not refer the dispute. Thus the matter was finally closed. The present reference is arising out of an industrial dispute raised by the concerned workman after a lapse of 12 years or so by concocting and manufacturing of some papers. He was not a genuine worker and was an inductee and so he was not provided with any job. The Custodian screened the workmen and only the genuine workmen were provided with job. The present management came into picture only after 1-5-73 and had no occasion to take any action against the concerned workman. Hence the concerned workman is not entitled to any relief.

3. The case of the concerned workman, as appearing from the written statement filed by him, shorn of unnecessary details is as follows:

He was employed in Pure Jairamdih Colliery with effect from 25-12-72 in the post of Tub Checker. His name found place in Form B Register of Pure Jairamdih Colliery at Sl. No. 31 and he was a member of Coal Mines Provident Fund having his Account No. D324361. Pure Jairamdih Colliery was a non-coking coal mine and its management was taken over by the Central Government with effect from 31-1-73 along with other non-coking coal mines. Immediately upon take over the day to day administration/management of taken over collieries was entrusted to M/s. B.C.C. Ltd. in the capacity of Additional Custodian General and subsequent to the nationalisation of the said taken over coal mines with effect from 1-5-73. The Central Government transferred the ownership of the collieries to M/s. B.C.C. Ltd. which was already looking after the management and control of those collieries. Subsequent to nationalisation M/s. B.C.C. Ltd. reorganised the nationalised collieries by way of amalgamation and in the said process Pure Jairamdih Colliery and a few others re-joining collieries were amalgamated with Benedih Colliery and came to be known as Benedih Colliery. In the meantime M/s. B.C.C. Ltd., had taken over all the records of employed persons of Pure Jairamdih Colliery and they started to rewrite the employment records of the employed persons and while doing so, dropped the names of several workmen to keep the employment figure as low as possible for reasons best known to them. In the said process he was stopped from his duty of Munshi with effect from 6-4-73. Colliery level and at the area level to allow him to continue in his employment but to no effect. Thereafter he represented his case along with others through their union before the Asstt. Labour Commissioner (C), Dhanbad on 25-2-74. The case was taken over in conciliation proceeding which was subsequently withdrawn by the union on the assurance given by the management that the matter would be settled by mutual negotiation but no fruitful result was achieved. The union by its representation dated 28-1-75 again raised the dispute before A.L.C.(C), Dhanbad. The dispute was taken up in conciliation proceeding which ended in failure due to non-cooperative attitude of the management. The said industrial dispute could not be referred to for adjudication due to some defects in proceeding the matter and due to non-availability of supporting papers in respect of 17 workmen including him in that dispute. However, during the conciliation proceeding the management had given him in writing that according to the instructions of the Ministry received by the management workmen who were members of Provident Fund should be given first preference and should be taken on rolls as regular workers of the colliery. Since he was a member of Provident Fund he represented separately his case before the management to allow him to continue his duty as Tub Checker or in other position as the management deemed fit. But his representation was rejected by the management without assigning any reason. Since his case is a case of stoppage of regular duty amounting to termination of employment he filed a petition before the A.L.C.(C), Dhanbad on 30-8-83. The A.L.C.(C), Dhanbad, took up the matter in conciliation on 23-9-83 and 26-10-83 but conciliation proceeding ended in failure and a report dated 27-3-84 was sent to the Ministry to that effect. He was a genuine employee of Pure Jairamdih Colliery which has since been amalgamated with Benedih Colliery of M/s. B.C.C. Ltd and the action of the management in not providing job to him with effect from 6-4-73 is arbitrary, illegal and is an act of unfair labour practice. In the circumstances, the concerned workman has proved that the action of the management in not providing job to him from 6-4-73 he held to be not justified and he be reinstated in service with full back wages and other consequential benefit.

4. The management has not submitted any rejoinder to the written statement of the concerned workman, but the concerned workman, however, submitted rejoinder to the written statement of the management. He has contended in his rejoinder that the facts stated in para 2 of the written statement of the management relating to his demand constitutes an attempt to deny his claim deliberately. As soon as he was made idle with effect from 6-4-73 an industrial dispute was raised with the management before the Industrial Relation Authority in 1974. He has asserted that Form B Register of the taken over colliery will clearly bear out his name as a workman of the colliery. He has denied to have been associated with any person of the colliery and got his name enrolled in the colliery by adopting any subterfuge. At no stage he was declared as inductee and one workman has been allowed duty out of the so called list of inductees prepared by the management. He has also denied other allegations made by the management in its written statement in denial of his claim.

5. The management has examined two witnesses, namely, MW-1 Ajit Kumar Pandey, Bonus-cum-Provident Fund Clerk of Benedih Colliery and MW-2 S. P. Dubey, P.O.'s Clerk in the same colliery but has not adduced any documentary evidence in support of its action. On the other hand, the concerned workman has laid in evidence a sheaf of documents which have been marked Exts. W-1 to W-15 and examined five witnesses including himself and MW-5 K. B. Dutta, formerly Manager of Pure Jairamdih Colliery.

6. According to the pleadings of the parties the undisputed facts are that the management of all non-coking coal mines including Pure Jairamdih Colliery which was a non-coking coal mine was taken over by the Central Government with effect from 31-1-1973 and that all the non-coking coal mines including Pure Jairamdih colliery were nationalised with effect from 1-5-1973.

It has remained undisputed also that some eight collieries, namely, Pure Jairamdih Colliery, Central Jairamdih Colliery, Khas Jairamdih Colliery, Jairamdih Colliery, New Jairamdih Colliery, Dumra-Panalgoria Colliery, Panalgoria Colliery, and Model Jairamdih Colliery were amalgamated with Benedih Colliery after nationalisation.

7. The present industrial dispute has arisen out of the action of the management in not providing job to the concerned workman, Tub Checker from 6-4-73. The case of the concerned workman is that he was an employee in Pure Jairamdih colliery with effect from 25-12-72 as Tub Checker and that he was stopped from his duties by the management with effect from 6-4-1973. In the context of facts and circumstances it is evident that the services of the concerned workman, as claimed by him, came to an end with effect from 6-4-73.

Sri B. Joshi, Advocate, for the management has urged before me that the present reference is not maintainable since this is a case of an individual dispute and that no union has raised the present dispute. But from the contentions of the parties and terms of reference it is evident that the employer of the concerned workman otherwise terminated his service as contemplated in Section 2A of the Industrial Disputes Act and hence this industrial dispute shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workman is a party to the dispute. This being the position, the present industrial dispute is maintainable.

8. The case of the management is that the concerned workman was never an employee of Benedih Colliery prior to take over of the management of the said colliery by the Central Government and that the concerned workman claims that he was a workman of Pure Jairamdih Colliery as Tub Checker and that he was not provided with any job from 6-4-73. It is the further case of the management that many persons having connection with coal industry tried to get their friends, relatives and favourites inducted into services of different collieries and that the Custodian, after taking charge of coal mines, appointed Screening Committee to examine all such cases of inductees and on the basis of the report all the inductees were not allowed to continue in employment. In other words the management have stated by oblique reference that the concerned workman was an inductee and he was not allowed to continue in employment by the Custodian.

The firm case of the concerned workman is that he was employed in Pure Jairamdih Colliery as Tub Checker with effect from 25-12-72 and that his name appeared in Form B Register at Sl. No. 31 of the said colliery and that he was a member of Coal Mines Provident Fund having Account No. D/324361. It is his further case that he was stopped from duty with effect from 6-4-73 and that he represented his case before the management but to no effect and thereafter he along with other workmen represented their case through their union before A.L.C.(C) on 25-2-74. No document has been made available to this Tribunal indicating that the union raised the dispute way back on 25-2-74. Nevertheless the letters of the Secretary, Congress Mazdoor Sangh, Bihar dated 28-1-75 and 26-8-75 are indicative of the fact that the union raised the dispute over stoppage of work of 38 workmen of Pure Jairamdih Colliery by the management way back on 2-7-74 and that out of which the dispute in respect of 21 workmen were settled leaving in the picture remaining 17 workmen (Ext. W-6 and W-8 respectively). The union urged upon the A.L.C.(C), Dhanbad to intervene in the matter and presumably in response to the letter of the union with Annexure 'A' containing information about 17 workmen which includes date of appointment, Form B No., designation and date of stoppage of work dated 28-1-75 (Ext. W-6), the A.L.C.(C), Dhanbad, asked the management to submit their comments and in response thereto the management stated in writing before the A.L.C.(C), Dhanbad as follows :

"M/S. P. K. Narula and '4 others from Sl. No. 1 to 15 of the Annexure 'A' as submitted by the union along with the representation dated 28-1-75, we have to inform you that the then Custodian of Madhuband Sub Area No. 1 was not seemed to be satisfied with genuinity of the cases as above and is screened out from the employment rolls of the colliery declaring them as inductees as a result they were stopped from the employment by him." (Ext. W-3).

The management also took up this position in its earlier letter dated 22-8-74 to the A.L.C.(C), Dhanbad (Ext. W-4). This letter of the management (Ext. W-4) was submitted before the A.L.C.(C) by Sri D. N. Jha, Personnel Officer Phularitand Sub Area along with initial man power list by the Manager of the colliery and Form B Register. It appears that the initial man power list provided by the Manager of Pure Jairamdih Colliery contained the name of the concerned workman having his date of appointment as 25-12-72 and that he was employed as Tub Checker and that his name appeared in Form B Register at Sl. No. 31. The Form B Register provided by the management was also checked by the A.L.C.(C), Dhanbad and found correct when compared to the initial man power list except in the case at Sl. No. 15 the date of appointment is shown as 13-12-72 and not 6-12-72 (as stated by the union). Thus, it is established that the name of the concerned workman appeared in Form B Register of the colliery at Sl. No. 31 and that his nomenclature was Tub Checker and also that his name appeared in initial man power list submitted by the manager of the colliery.

9. MW-1 Ajit Kumar Pandey claims to have been posted as Bonus-cum-Provident Fund Clerk in Pure Jairamdih Colliery at the time of take over. He has stated that the concerned workman never worked in Pure Jairamdih Colliery in any capacity. MW-2 S. P. Dubey has been clerking in Benedih Colliery as P.O.'s Clerk. He has stated that there was no workman by the name of the concerned workman and having the designation of Tub Checker in Pure Jairamdih Colliery. Since he was not posted in Pure Jairamdih Colliery he is not competent to state whether the concerned workman was employed as Tub Checker in Pure Jairamdih Colliery or not. The evidence of MW-1 Ajit Kumar Pandey that the concerned workman was not a workman of Pure Jairamdih Colliery is not worthy of credence because the name of the concerned workman appeared in Form B Register.

10. MW-5 K. B. Dutta was the manager of Pure Jairamdih Colliery immediately before the management of the said colliery was taken over by the Central Government. He has stated that when the Custodian took over after the management of the colliery was taken over by the Central Government he submitted a list of all workmen working in Pure Jairamdih Colliery to the Custodian and that the name of the concerned workman appeared in that list. His evidence

gets meaningful support from the document of the management submitted by the concerned workman and marked as Ext. W-4. This document indicates that initial man power list was submitted by the Manager of the Colliery to the Custodian and that this list included the name of the concerned workman.

11. It appears from the evidence that a Screening Committee was constituted with Shri K. C. Namkeolvar as Chairman and Sri R. A. P. Singh, Member of the said Committee presumably to weed out the names of the workmen who had sneaked into the employment of the management by devious ways. It further appears that in the process the name of the concerned workman was left out and a final man power list was prepared. But the management has not provided any facts or any proof whereby the Screening Committee was satisfied that the concerned workman was not the real workman of Pure Jairamdih Colliery. On the other hand, it is gathered on evidence that the name of the concerned workman having the nomenclature of Tub Checker appeared at sl. no. 31 of Form B Register of Pure Jairamdih Colliery. His name also appeared in the initial man power list provided by the Manager of the Pure Jairamdih Colliery by the Custodian. It transpires from evidence of MW-2 S. P. Dubey that the records of Pure Jairamdih Colliery including Form B Register and Screening list were sent to the Sub-Area and from there to Area office and that the records are not available in Block II Area. So it appears that the plea of Sri Dubey is that the records are not available. But there is nothing in evidence to indicate that the records of Pure Jairamdih Colliery are lost for ever. Even so Form B Register produced by the management to the A.L.C. (C) contained the name of the concerned workman as Tub Checker at sl. no. 31 of the said register. The evidence of WW-5 K. B. Dutta establishes the fact that the initial man power list submitted by him to the custodian included the name of the concerned workman as Tub Checker.

The nomenclature of Tub Checker is not unknown to the coal industry. The report of the Central Wage Board for Coal Mining Industry Volume-II page 54 indicated existence of such nomenclature in coal industry.

12. Apart from documentary evidence the case of the concerned workman that he was employed in Pure Jairamdih Colliery as Tub Checker is bolstered up by the oral evidence as well. WW-2 P. P. Singh has stated that he has been working as Munshi in Benedih Colliery and that earlier he was working in Pure Jairamdih Colliery and at the time of take over he was posted as Night Guard. He has emphatically stated that the concerned used to work as Tub Checker at the quarry of the said colliery. He has not flinched from his asseveration in cross-examination. MW-3 Fagu Rawani has stated that he was working as mining sirdar in Pure Benedih Colliery and that Pure Jairamdih Colliery was near Pure Benedih Colliery. According to him, there existed one quarry in Pure Jairamdih Colliery and that the concerned workman was working as Tub Checker or Munshi in the said Colliery. He has also claimed to have been the concerned workman performing his duty as Tub Checker. His evidence has remained undismayed in cross-examination. WW-4 is the concerned workman. He has testified in support of his case and asserted that his name was recorded in Form B Register as Sl. No. 31 of Pure Jairamdih Colliery and that he was employed there as Tub Checker and that he became a member of Provident Fund having Provident Fund Account No. B/324361 after completion of service for one year. He has also stated that he was stopped from duty by the management after nationalisation with effect from 6-4-73. He has brought in evidence an extract of the Allotment Register of the Provident Fund marked Ext. W-2 by examining WW-1 B. B. Singh, now working as Upper Division Clerk in Coal Mines Provident Fund, Dhanbad. This witness, while producing the Allotment Register in respect of Account No. D/324361 standing in the name of the concerned workman, has stated that the register in question is a voluminous one and the names

of many persons appeared in that register and since the register is required for day to day use it can not be taken out of the office. But the extract of the Allotment Register describes the Account No. name of the concerned workman and his father's name but the name of colliery has been stated there as Central Ganespur Colliery while the case of the concerned workman is that he was a workman of Pure Jairamdih Colliery. It may be that an error has crept here or there and for this reason this Allotment Register cannot be discarded from the evidence specially in view of the fact that WW-1 B. B. Singh has denied it as impossible position that any man who is not a workman of the colliery can get his name entered in the Register maintained by the Coal Mines Provident Fund Commissioner by manipulation or otherwise. WW-5 K. B. Dutta was the former manager of Pure Jairamdih Colliery. He was the manager of the said colliery immediately before the management of the said colliery was taken over by the Central Government. He has emphatically stated that during the time of erstwhile private management Form B Register was used to be maintained in the Colliery and that the workmen of the Colliery were members of Coal Mines Provident Fund. It is his evidence that during private management there was a post in the Colliery by the nomenclature of Tub Checker and the concerned workman was the said Tub Checker and his name appeared in Form B Register. He has further stated that so far as he remembers the concerned workman was the member of provident fund and that when the Central Government took over the management of the colliery, the custodian took over all papers relating to the colliery from the private management including Form B Register. His evidence has remained firm even after cross-examination.

13. It appears that the management has taken in employment Dipak Kumar Mitra, a Pan Khalasi, whose name appeared at sl. no. 328 of Form B Register out of the discarded 17 persons. It appears that the Union continued to represent the cases of 17 workmen to the management. The letter of the General Secretary, Rashtriya Colliery Mazdoor Sangh to the General Manager (Personnel), M/s. B. C. C. Ltd. dated 1-2-82 (Ext. W-7) is one of such representation. After Dipak Kumar Mitra was taken back in service the concerned workman represented his case to the A.L.C. (C), Dhanbad, by letter dated 30-8-83 (Ext. W-8.) In this letter the concerned workman has stated that Dipak Kumar Mitra was allowed to resume his duty in September, 1972. It has remained in explicable as to why the concerned workman was not allowed to resume his duty despite the fact that his Sl. No. in Form B Register was way ahead of serial number of Dipak Kumar Mitra.

14. Thus, totality of evidence, both oral and documentary leads to the inescapable conclusion that the concerned workman was employed as Tub Checker in Pure Jairamdih Colliery prior to take over of the management of the said colliery by the Central Government and subsequently nationalisation of the said Colliery. That being so, I am constrained to hold that the management was not justified in not providing job to the concerned workman which tantamounts termination of his service. Hence, the management is directed to reinstate the concerned workman in service with back wages from the date of reference i.e. 28-7-1984 and he should be given continuity in service from 6-4-1973 till the date of reference which shall be treated as leave without pay.

15. Accordingly, the following award is rendered—the section of the management of Benedih Colliery of M/s. Bharat Coking Coal Ltd. in not providing job to the concerned workman, Tub Checker, from 6-4-1973 is not justified. The management is directed to reinstate him in service immediately and give him back wages from the date of reference i.e. 28-7-1984 till he joins his duty. The management is also directed to give him continuity of service from 6-4-1973 till the date of reference treating him to be on leave without pay for the period.

The concerned workman in directed to join his duty within one month from the date of publication of the award.

In the circumstances of the case, I award no cost.

S. K. MITRA, Presiding Officer

[No. L-20012/154/84-D.III(A)/IR (Coal-D)]

का.आ. 1481.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, मैसर्स भारत कोकिंग कोल लिमिटेड की खरखरी कोलियरी के प्रबन्धनत्व में सम्बन्धित नियोजकों और उनके कर्मचारों के बीच अनुबन्ध में निश्चित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, (सं. 1) धनबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-6-1989 को प्राप्त हुआ था।

S.O. 1481.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal (No. 1), Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the management of Kharkharee Colliery of M/s. Bharat Coking Coal Ltd. and their workmen, which was received by the Central Government on the 6-6-1989.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of a reference under section 10(1)(d) (2A) of the Industrial Disputes Act, 1947

Reference No. 50 of 1988

PARTIES :

Employers in relation to the management of Kharkharee Colliery of M/s. Bharat Coking Limited.

AND

Their Workmen.

APPEARANCES :

For the Employers : Shri R. S. Murty, Advocate.

For the Workman : Shri D. Mukherjee, Secretary,

Bihar Colliery Kamgar Union.

STATE : Bihar

INDUSTRY : Coal.

Dated, the 30th May, 1989

AWARD

The present reference arises out of Order No. L-24012 (160)87-D.IV(B), dated, the 6th January/12th February, 1988 passed by the Central Government in respect of an industrial dispute between the parties mentioned above. The subject matter of the dispute has been specified in the schedule to the said order and the said schedule runs as follows :

"Whether the demand of the Union/Workmen of Kharkharee Colliery for regularisation of Smt. Deoki Kamin No. 2, Smt. Fulwa Kamin and Smt. Kartik Bai Kamin as Wagon Loader by the Management is justified? If so, to what relief the workmen concerned are entitled?"

2. The dispute has been settled out of Court. A memorandum of settlement has been filed in Court. I have gone through the terms of settlement and I find them quite fair and reasonable. There is no reason why an award should not be made on the basis of terms and conditions laid down in the memorandum of settlement. I accept it and make an award accordingly. The memorandum of settlement shall form part of the award.

3. Let a copy of this award be sent to the Ministry as required under Section 15 of the Industrial Disputes Act, 1947.

S. K. MITRA, Presiding Officer

[No. L-20012/160/87-D.IV(B)/IR (Coal-I)]

BEFORE THE PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1 DHANBAD

Reference No. 50 of 1988

Employers in relation to the management of Kharkharee Colliery under Govindpur Area, M/s. Bharat Coking Coal Limited;

AND

Their Workmen

Joint compromise petition of employer and workmen

The humble petition on behalf of the parties to the above reference most respectfully sheweth :—

(1) That the Central Government by Notification No. L-24012(160)87-D-IV(B) dated 12-2-1988 has been pleased to refer the present dispute on the following issue:—

"THE SCHEDULE"

"Whether the demand of the union/workmen of Kharkharee Colliery for regularisation of Smt. Deoki Kamin No. II, Smt. Fulwa Kamin and Smt. Kartik Bai Kamin as Wagon Loader by the management is justified? If so, to what relief the workmen concerned are entitled?"

(2) The above mentioned employers and the workmen most respectfully beg to submit as follows :—

TERMS OF SETTLEMENT

(1) That the employers and the workmen have jointly negotiated the matter covered by the aforesaid reference with a view to arriving at a mutually acceptable and amicable settlement.

(2) That as a result of such negotiations, the employers have agreed to settle the matter covered by the above reference on an over-all basis on the following terms and conditions;

(a) It is agreed that the management has already regularised the three workmen covered by the reference as permanent wagon loaders from the dates indicated against each and that they are already working as permanent wagon loaders.

Name of workmen.

Date from which regularised as permanent wagon loader.

1. Smt. Deoki Kamin No. 2

1-6-88

2. Smt. Fulwa Kamin

(should be Fulwa Kamin No. 2)

1-6-88

3. Kartik Bai

17-1-89

(b) It is agreed that in view of the position as indicated in Clause (a) above, the dispute referred to the Hon'ble Tribunal stands fully resolved and settled and that the workmen have no further claim.

(c) It is agreed that this is an overall settlement in full and final settlement of all the claims of the workmen and the sponsoring union arising out of the aforesaid reference.

(3) That the Employers and workmen jointly declare and confirm hereby that they considered that the aforesaid settlement/terms and conditions are just, fair and reasonable to both the parties.

In view of the above, the Employers and the Workmen jointly pray that the Hon'ble Tribunal may be pleased to give an award in terms of the aforesaid settlement/agreement and dispose of the reference accordingly

in respect of an industrial dispute between the parties mentioned above. The subject matter of the dispute has been specified in the schedule to the said order and the said schedule runs as follows :—

FOR THE EMPLOYERS

(S. N. P. RAI)

GENERAL MANAGER

(S. P. SINGH)

PERSONNEL MANAGER
GOVINDPUR AREA

FOR THE WORKMEN/UNION

(D. MUKHERJEE)

SECRETARY

BIHAR COLLIERY KAMGAR UNION

Witnesses :—

1. Sd/- Illegible

2. Sd/- Illegible

Sd/- Illegible

Advocate for Employers

का.सं. 1482—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14)
की धारा 17 के अनुसार मैं, केन्द्रीय सरकार, मैसूर भारत कोकिंग कोल लिमिटेड का अटार्नी जनरल केन्द्र प्रोटेक्ट के परामर्श से सम्बद्ध नियोजकों और उनके कर्मचारियों के बीच गुरुवृत्त में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, (सं.-1) धनबाद के पंचाट को प्रस्तुत करती है, जो केन्द्रीय सरकार को 6-6-1989 को प्राप्त हुआ था।

S.O. 1482.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal as shown in the Annexure in the industrial dispute between the employers in relation to the management of Block II open Cast Project of M/s. Bharat Coking Coal Limited and their workmen, which was received by the Central Government on 6-6-1989.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

(In the matter of a Reference under Section 10(1)(d) of the Industrial Disputes Act, 1947).

Reference No. 16 of 1987

PARTIES :

Employers to the management of Block II Open Cast Project of M/s. Bharat Coking Coal Ltd.

AND

Their Workmen

APPEARANCES :

For the Employers—Sri B. Joshi, Advocate.

For the Workmen—Sri J. P. Singh, Advocate.

STATE : Bihar.

INDUSTRY : Coal

Dated, the 29th May, 1989

AWARD

The present reference arises out of Order No. I-20012(55)/87-D.III(A) dated 24-9-87 passed by the Central Government

"Whether the action of the management of Open Cast Project Block II Area of M/s. Bharat Coking Coal Ltd., P.O. Nudkurkee, Dist. Dhanbad in reducing the wage scale of S/Shri Idrish Ansari, Saukat Ali, Devlal Pandit, Aron Komar, S. Parvex Ahmed, Kishum Prasad Turi, Jagdish Pashi, Faudi Yadav, Sarjee Sharma and Prabhunath Ram Dumpmen/Tripmen from excavation Grade 'D' to Clerical Grade III of NCWA III is justified? If not, to what relief the workmen are entitled?"

2. The case of the management of Open Cast Project Block II Area of M/s. Bharat Coking Coal Ltd., Dhanbad as appearing from the written statement submitted, details apart, is as follows :

The designation like Dumpman/Tripman are given in Opencast workings whereas Pitman/Sircar/Traffic Munshi are given for underground and surface workings to those workmen who maintain the records of movement of vehicles meant for transportation of coal/materials from one place to another. Such workmen engaged in Opencast workings were put in Grade 'F' whereas such workmen engaged in underground working were put in Grade III. The wages of Grade 'F' workers has always remained less than clerical Grade III. The Wage Board Recommendations prescribed that all new persons to be appointed as Dumpmen/Tripmen should be placed in clerical Grade III and Grade 'F' should be abolished. From 1-1-75 Grade 'F' was abolished under NCWA and all Dumpmen/Tripmen were placed in clerical Grade III throughout the Coal Industry and Grade 'D' has not been prescribed for Dumpmen/Tripmen anywhere. The then Dy. Chief Personnel Manager (MPR) issued an office order due to oversight and as soon as the same came to the knowledge of the management, the error was rectified. It is admitted that the office order was issued by the Dy. Chief Personnel Manager (MPR). Because the error was committed in issuing the said office order, the said office order was amended by another office order issued on 7/8-11-86. From the above it is clear that an error was committed and on review the same was rectified. Under the circumstances the workmen cannot take advantage of the error. The concerned workmen were fixed on correct grade with effect from 7-11-86. They have drawn excess wages from their respective dates of joining as Dumpmen/Tripmen upto the date of issuance of letter dated 7/8-11-86 fixing them in proper grade of clerical Grade III. The management did not take any step for realisation of the excess amount in view of the present dispute. Different scales of pay are available to different posts according to the nature of duties fixed by legally valid settlement namely NCWA-I, II & III and acceptance of the Wage Board recommendations by the Central Government at the request of Trade Unions. Thus the Wage Board recommendations and NCWA have become statutorily binding both on the management as well as on the workmen. The management has no authority to arbitrarily fix different scales of wages for different workmen performing the same nature of job and thus bringing out discrimination and arbitrariness. The concerned workmen cannot take advantage of the error committed by the management and it is asserted that its action is justified inasmuch as the management has every right to correct the mistake committed by any of its officer.

3. The case of the sponsoring union namely Kowala Ispat Mazdoor Panchayat, Jharia as appearing from the written statement submitted, briefly stated, is as follows :

The sponsoring union is operating in Dhanbad Coalfields since 1949 and the concerned workmen have remained faithful members of this union. The wages of workers in Opencast Project is as per wage scale available to Excavation Grade under NCWA III which came into force with effect from 1-1-83. The concerned workmen were permanent workmen working on piece-rated job as miners/loaders in different collieries. The management of M/s. B.C.C. Ltd. by their Circular dated 28-5-85 invited applications from the existing

permanent employees for the posts of Dumpmen/Tripmen in the scale of pay of Rs. 27,14-1.15-43.54 (Excav. Grade D). These workmen, being on piece rated job and had guaranteed basic wage of Rs. 24.85 and 20 per cent underground allowance and since they possessed requisite qualification of Matriculation as required in the above circular applied for the post in the scale of Rs. 27.44-1.15-43.54 through their respective controlling officers and General Managers of the area. They were interviewed and found fit to be appointed as Dumpmen/Tripmen in the scale prescribed in the circular. By letter dated 23-8-85 they were posted at Block II on a wage scale of Rs. 27,44-1.15-43.54 (Excav. Group D). By another letter dated 7/8-11-86 all of them including others were informed that their scale of pay had been re-fixed in accordance with NCWA III in clerical Grade III with immediate effect. But no prior information or reason was given to them for revision of the pay scale in contravention of Section 9A of the Industrial Disputes Act. By introduction of the new wage scale their wages have been reduced. It is alleged that the action of the management is wrong, illegal, malicious and invalid. It has become a part of the service condition to get wages as per Excavation Grade 'D' and the management cannot change it.

4. In reply to the written statement of the sponsoring union the management has admitted that the concerned workmen were found suitable for appointment as Dumpmen/Tripmen but the question of fixation of their wages on proper grade has got nothing to do with the selection. Their wages have been fixed under the Wage Board recommendations and NCWA. All Dumpmen/Tripmen engaged in Coal Industry are entitled to get clerical Grade III under Wage Board recommendations and NCWAs. When the order of realisation of excess amount paid to them will be passed the question of issue of notice Under Section 9A of the Industrial Disputes Act will be considered. Presently they are simply put on proper grade which was due to them. In such a case no notice under Section 9A of the Industrial Disputes Act is required to be issued.

5. In rejoinder to the written statement of the management the sponsoring union has stated that they applied for the posts of Dumpmen/Tripmen in response to the advertisement of the management and were offered the scale of pay of Excavation Grade D. They have drawn wages according to the scale and the management cannot withdraw the pay scale of Excavation Grade 'D' as Section 9-A of the Industrial Disputes Act stands as a bar to the change of pay scale from Excavation Grade D to Clerical Grade III without the prescribed notice issued according to law.

6. The management has not examined any witness nor has it introduced in evidence any document. Sri B. Joshi, Advocate for the management has submitted that the documents submitted by the sponsoring union and NCWA's provide the basis of the case of the management.

The sponsoring union on the other hand has examined one of the concerned workmen namely WW-1 Sri Arun Kumar and introduced in evidence 3 documents which have been marked Exts. W-1 to W-3.

7. Undoubtedly the concerned workmen were permanent workmen of M/s. B.C.C. Ltd., and they were working on piece-rated job as miners/loaders in different collieries. There is no dispute that all of them are Matriculates or having equivalent qualifications.

8. Admittedly Dy. Chief Personnel Manager (MP/R) of M/s. B.C.C. Ltd., Karmik Bhawan, Dhanbad by circular dated 20/25-5-85 invited applications from the existing permanent employees for the posts of Dumpmen/Tripmen in the scale of pay of Rs. 27,44-1.15-43.54 (Excav. Grade 'D') Ext. W-1. The circular aforesaid also envisages that the qualification for the post was Matriculation or equivalent and the age of the candidate should be not more than 30 years and that employees who were permanent and were working as piece-rated jobs were also eligible to apply. Since the concerned workmen were permanent workmen on piece-rated job, they 1629 GI/89-3

applied for the posts and were selected in the scale of pay of Rs. 27,44-1.15-43.54 (Excav. Group D) by the Office Order dated 22/23-8-85 (Ext. W-2). There is no dispute that the concerned workmen have worked as Dumpmen/Tripmen and drawn their wages in Excavation Grade D for about 15 months. Admittedly by the order dated 7/8-11-86 the management placed them in Clerical Grade III in accordance with the provisions of NCWA III and according to the management the concerned workmen were wrongly placed in Excavation Grade D instead of Clerical Grade III (Ext. W-3).

9. Sri B. Joshi, Advocate has submitted before me that the job description of the Dumpmen/Tripmen/Pitmen appears in Appendix-VII at page 57. Vol. II of the report of the Central Wage Board for the Coal Mining Industry. As per the report the job description of the aforesaid category of workmen are as follows :

As workman who should maintain records of employment of dumpers and Coal haulers and give manual signal for placement of vehicles for loading and unloading. He should prepare daily reports. He should be a Matriculate.

Sri Joshi has further submitted that as per the report of the Central Wage Board, Dumpmen/Tripmen and Pitmen were placed in Category 'F' and this has been done away with in NCWAs and D category of workman has been placed in category of clerical Grade III. The report of Central Wage Board and the NCWAs-I II. & III bear out the position as submitted by Sri Joshi. Sri Joshi has further submitted that the management has got every right to correct any error committed by it and this it has done by issuing an office order dated 7/8-11-86 (Ext. W-3).

10. Indeed there cannot be any dispute over the contention of Sri Joshi that the management has got every right to remedy any error committed by it, but even then the matter is not so easy as Sri Joshi would have us believe.

11. Admittedly the concerned workmen had applied for the post of Dumpmen/Tripmen on a scale of pay of Rs. 27,44-1.15-43.54 (Excav. Grade D) in response to the advertisement of the management. It is the irrefragable position that the concerned workmen were selected for the post, worked in the said post and drawn wages as available to Excavation Grade D for about 14 months. In other words, it has almost become a service condition to draw wages as per this scale. The management has taken this position that fixation of wages of the concerned workmen as per Excavation Grade D is erroneous and that it should be in accordance with wages as available to workman under clerical Grade III. The management has got every right to rectify an error or mistake but not before giving notice to the concerned workmen in accordance with law. But this the management has not done and abruptly has reduced the wages of the concerned workmen. This action of the management is not considered justified.

The management may, however, rectify the error or mistake in accordance with the provisions of law.

12. Accordingly the following award is made. The action of the management of Open Cast Project Block II Area of M/s. Bharat Coking Coal Ltd., in reducing the wage scale of S/Sri Idrish Ansari, Saukat Ali, Devilal Pandit, Arun Kumar, S. Parvex Ahmed, Kishum Prasad Turi, Jagdish Pashii, Faruq Yadav, Sarjee Sharma and Prabhunath Ram from Excavation Grade 'D' to Clerical Grade III is not justified. The management may, however, rectify the error or mistake according to law.

In the circumstances of the case, I award no cost

S. K. MITRA, Presiding Officer

[No. L-20612/55/87-D.III(A)/IR(Coal-I)]

का.प्र. 1483—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार श्री.बी.सी. माहन्त बर्मो, डाकघर-बर्मो, जिला गिरिडीह के प्रबन्ध तंत्र से सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुवन्ध में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण (सं. 1) धनबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 7-6-1989 को प्राप्त हुआ था।

BEFORE THE PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1
Reference No. 32 of 1988

Management of D.V.C. Bermo Mines.

AND

Their Workman.

The parties above named begs to submit that the above case has been settled between the parties on the following terms :

That it has been decided that the promotion of the concerned workmen namely Shri Gyan Singh, Tyndal Kholasi in the post of Tyndal Jamadar will be considered by the management just after retirement of Shri Gurunam Singh, Tyndal Jamadar who will be retired on 31-7-1989 on superannuation. As Shri Gyan Singh is looking after the job of Tyndal Jamadar also from time to time in addition to his own work the management is agreed to pay him 10% of the basic as the difference of wages w.e.f. 1-1-88.

That in view of the above it has been decided that the workman or his representative does not want to proceed further with the above reference.

That the above terms have finally decided the dispute between the parties and no further adjudication is required.

It is thereafter submitted that an award be passed in the terms mentioned above and the reference may be disposed off accordingly.

For Employer :

Sd/-

(S. K. Choudhary)

Coal Supd. and Agent

D.V.C. Bermo Mines.

For Workmen :

Sd/-

(Dinesh Choubey)

Secretary

DVC Staff Association

Bermo Mines Unit.

26-5-89.

का.प्र. 1484.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, मेसर्स भारत कोकिंग कोल लि. की मुरलीडीह कोलियरी के प्रबन्धतंत्र से सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुवन्ध में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण (सं. 1), धनबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-6-1989 को प्राप्त हुआ था।

S.O. 1484.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. 1, Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the management of Murlidih Colliery of M/s. Bharat Coking Coal Limited and their workmen, which was received by the Central Government on 6-6-1989.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of a reference under section 10(1)(d) (2A) of the Industrial Disputes Act, 1947

Reference No. 15 of 1987

PARTIES :

Employers in relation to the management of Murlidih Colliery of M/s. Bharat Coking Coal Limited.

AND

Their Workmen.

S.O. 1483.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal (No. 1), Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the management of D.V.C. Mines, Bermo, P.O. Bermo, Distt. Giridih and their workmen, which was received by the Central Government on 7-6-1989.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of a reference under section 10(1)(d) (2A) of the Industrial Disputes Act, 1947

Reference No. 32 of 1988

PARTIES :

Employers in relation to the management of D.V.C. Mines, Bermo (Giridih).

AND

Their Workmen.

APPEARANCES :

For the Employers—Shri S. Choudhary, Labour Law Officer.

For the Workmen—Shri P. G. Guha, Asstt. General Secretary, D.V.C. Staff Association.

STATE : Bihar

INDUSTRY : Mines

Dated, the 30th May, 1989

AWARD

The present reference arises out of Order No. L-24012 (105)/87-D.IV (B), dated, the 23rd December, 1987/6th February, 1988 passed by the Central Government in respect of an industrial dispute between the parties mentioned above. The subject matter of the dispute has been specified in the schedule to the said order and the said schedule runs as follows :

"Whether the action of the Management of DVC Mines, Bermo, P.O. Bermo, Distt. Giridih in not regularising and not paying difference of wages to Sri Gyan Singh, Tyndal Jamadar when he has been working in the same capacity since 1-6-85, is legal and justified ? If not, to what relief the concerned workman is entitled ?"

2. The dispute has been settled out of Court. A Memorandum of settlement has been filed in Court, I have gone through the terms of settlement and I find them quite fair and reasonable. There is no reason why an award should not be made on the basis of terms and conditions laid down in the memorandum of settlement. I accept it and make an award accordingly. The memorandum of settlement shall form part of the award.

3. Let a copy of this award be sent to the Ministry as required under Sec. 15 of the Industrial Disputes Act, 1947.

S. K. MITRA, Presiding Officer
[No. L-24012/105/87-D.IV (B)/IR (C-1)]

APPEARANCES :

For the Employers—Shri B. N. Prasad, Advocate.

For the Workmen—Shri D. Mukherjee, Secretary, Bihar Colliery Kamgar Union.

STATE : Bihar

INDUSTRY : Coal

Dated, the 29th May, 1989

AWARD

The present reference arises out of Order No. L-20012 (56)/87-D.III (A), dated the 18th September, 1987 passed by the Central Government in respect of an industrial dispute between the parties mentioned above. The subject matter of the dispute has been specified in the Schedule to the said order and the said Schedule runs as follows :

“Whether the action of the management of Murlidih Colliery of M/s. Bharat Coking Coal Limited, P.O. Mohuda, Distt. Dhanbad in dismissing Shri Natru Manjhi, Miner/Loader from service w.e.f. 15-1-1985 is justified? If not, to what relief the workman is entitled?”

2. The dispute has been settled out of Court. A memorandum of settlement has been filed in Court. I have gone through the terms of settlement and I find them quite fair and reasonable. There is no reason why an award should not be made on the basis of terms and conditions laid down in the memorandum of settlement. I accept it and make an award accordingly. The memorandum of settlement shall form part of the award.

3. Let a copy of this award be sent to the Ministry as required under Sec. 15 of the Industrial Disputes Act, 1947.

Sd/-

S. K. MITRA, Presiding Officer
[No. L-20012/56/87-D.III (A)/1R (C-I)]

K. J. DYVA PRASAD, Desk Officer

FORM 'H'

(See Rule 58)

Form for Memorandum of Settlement

Name of the parties :

General Manager, Mohuda Area No. 2 M/s. Bharat Coking Coal Ltd. —Representing Employer(s)

1. Sri B. Mohanthy Secretary, Bihar Colliery Kamgar Union.

2. Natru Manjhi —Representing the workmen.

SHORT RECITAL OF THE CASE

President Bihar Colliery Kamgar Union had raised an industrial dispute about the alleged wrongful dismissal of Sri Natru Manjhi. After the failure of conciliation the dispute was referred to the Central Government Industrial Tribunal No. 1 Dhanbad for adjudication with the following terms of reference vide their order No. L-20012(56)/87-D.III (A) dated 18-9-1987—

“Whether the action of the management of Murlidih Colliery of M/s. Bharat Coking Coal Ltd., P.O. Mohuda Distt. Dhanbad in dismissing Sri Natru Manjhi Miner/Loader from service w.e.f. 15-1-1985 is justified? If not, to what relief the workman is entitled?”

While the matter is pending before the Hon'ble Tribunal No. 1 Dhanbad under reference No. 15/87, the parties have discussed and negotiated outside the Court for arriving at a mutually agreed solution. As a result of the mutual discussion and negotiation the parties have agreed to settle the dispute on the following terms and conditions :—

(1) That the workman namely Natru Manjhi will be taken back in employment by the management with immediate effect.

(2) That he will not be entitled for any wage during the period falling between the date of his dismissal and the date of his resumption of duty ;

(3) That the workman will, however, be given the continuity of service for the purpose of gratuity ;

(4) That this settlement is full and final in respect of all the claims arising out of this dispute ;

(5) That the parties consider and confirm that this settlement just and fair for both the parties.

(6) That the parties shall file a copy of this settlement before the Hon'ble Tribunal No. 1 Dhanbad as a joint compromise petition and also jointly forward copies to the Central Government Chief Labour Commission (C) New Delhi, RLC(C) Dhanbad and Asstt. Labour Commissioner (C), Dhanbad.

General Manager, Mohuda Area

Area No. 2-Representing the Employer(s)

1. Secretary BCKU

2. Mentrui Manjhi

Representing the workman.

Witness :—

1. Sd/- Illegible

2. Sd/- Illegible

का.भा. 1485—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसूचना में, केन्द्रीय सरकार, मैसर्स भारत कोकिंग कोल लिमिटेड की कतरास चौतुडीह कोलियरी के प्रबन्धन से सम्बन्धित नियोजकों और उनके कामकारों के बीच, अनुबन्ध में निश्चित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण (स. 2), धनबाद के पंचाट को प्रकाशित करती है।

S.O. 1485.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. 2, Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the management of Katras Chotudih Colliery of M/s. Bharat Coking Coal Ltd. and their workmen, which was received by the Central Government.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

Reference No. 123 of 1985

In the matter of an industrial dispute under section 10(1)(d) of the I. D. Act, 1947

PARTIES :

Employers in relation to the management of Katras Chotudih Colliery of Messrs Bharat Coking Coal Limited and their workmen.

APPEARANCES :

On behalf of the workmen—Shri S. Bose, Secretary, R.C.M.S. Union.

On behalf of the employers—Shri B. Joshi, Advocate.

STATE : Bihar

INDUSTRY : Coal,

Dhanbad, the 22nd May, 1989

AWARD

The Government of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I. D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012 (98)/85-D.III (A), dated, the 12th August, 1985.

SCHEDULE

"Whether the action of the management of Katras Choitudih Colliery of M/s. Bharat Coking Coal Ltd. Post Office Katrasgarh, Dist. Dhanbad in denying employment to the workmen named in the Annexure below is justified? If not, to what relief these workmen are entitled?"

ANNEXURE

1. Parbali Mia
2. Idrish Mia
3. Rabul Mia
4. Suleman Mia
5. Hussaini Mia
6. Sanichar Mia
7. Idrish Mia No. 2
8. Aman Mia
9. Hanif Mia
10. Abdul Mia.

The case of the workmen is that the 10 concerned workmen were permanent miner/loader in the West Pit (Gurkia seam) of Katras Choitudih Colliery of M/s. BCCL since the winter of 1968 and continued as such till 22-2-72 when they were stopped by the management without any notice. The management of the Colliery was taken over by the Central Government with effect from 17-10-71 and it was handed over to M/s. BCCL for operation of the Colliery along with a large number of Coking Coal Mines. The concerned workmen performed their duties upto 22-2-72 and thereafter they went on leave for 3 days for attending Muharram Festival at their village home. They returned to the colliery after expiry of their leave and wanted to resume their duties but they were not allowed to resume their duties by the Colliery Management. When the concerned workmen were stopped from duty, they represented before the Colliery officials who assured them to look into the matter but nothing was done by that management. The management engaged a large number of fresh hands as miner/loader in different collieries since 1977 onwards but the concerned workmen were not given employment. The Union of the concerned workmen namely R.C.M.S. took up their case before the management at different levels but could not obtain any relief for the concerned workmen. The Central Office of RCMS Dhanbad by their letter dated 14-2-78 and 3-3-78 addressed to the General Manager, BCCL Area No. V requested the management to allow the concerned workmen to their original duties as miner/loader but to no effect. Thereafter the union by its letter dated 6-4-78 raised an industrial dispute before the ALC (C) Dhanbad. The ALC(C) Dhanbad took up the matter in conciliation proceeding. The conciliation proceeding ended in failure. At first, Government of India did not refer the dispute for adjudication to the Tribunal. The union continued correspondence for sometime and the matter was again taken up in conciliation proceeding and a further report was sent by the ALC (C), Dhanbad vide his letter dated 2-5-85 and thereafter the present reference was made to this Tribunal for adjudication. It is submitted on behalf of the workmen that the concerned workmen were permanent employees working as miner/loader and they were performing the duties on 17-10-71 when the management of the said colliery was taken over by the Central Government and BCCL remained in management and control of the said colliery till 1-5-72 where it was nationalised. The stoppage of the work of the concerned workmen without any notice and without any disciplinary proceeding was arbitrary and illegal action of the management and as such the stoppage of their work is not justified. On the above facts it is prayed that the concerned workmen should be reinstated with full back wages and allowance, as if they continued in employment.

The case of the management is that the concerned workmen were not on the rolls of the Colliery on 17-10-71 when

the management of the Coking Coal Mines was taken over and as such the question of taking them in the employment did not arise. The concerned workmen were not on the roll of the colliery on 1-5-72 when the Coking Coal Mine was nationalised and as such they had no right to claim for employment under the provision of the then existing section 17 of the Coking Coal Mines (Nationalisation) Act, 1972. The provision of Section 17 of the Coking Coal Mine (Nationalisation) Act, 1972 has already been substituted by new provision and the claim for employment under Section 17 of the said Act is no longer available to any workmen. The present reference also suffers from delay and as such it is not maintainable. The sponsoring union raised an industrial dispute before the ALC(C), Dhanbad in the year 1978 alleging that the management stopped the concerned workmen from their duties with effect from 22-2-72 and it demanded for their employment. The management pointed out to the ALC (C) that the concerned workmen were not in the employment of the company prior to 22-2-72 and as such the question of stopping them from their duties did not arise. The management had produced relevant documents before the ALC (C) and the ALC (C) and the higher officers of the Central Government were fully satisfied that there was no material to support the contention of the union and the Central Government by letter dated 19-1-80 refused to make reference of the dispute to the Tribunal. Thereafter a fresh dispute was raised by the union in the year 1984 demanding employment of the concerned workmen. Taking advantage of the long gap of 12 years the concerned workmen made an attempt to show that they were employed during private managements time by fabricating certain papers with connivance of some interested persons. The present reference is the out come of false demand made on behalf of the strangers and not on behalf of any genuine workman. The union produced a letter purported to be under the signature of Shri R. R. V. Sinha the then Dy. Personnel Manager of Sijua Area addressed to Shri S. P. Ray mentioning therein that the concerned workmen abandoned their services from 22-2-72. Shri R. R. V. Sinha was asked by the management to show the papers on the basis of which he sent that letter and thereafter Shri Sinha issued the letter dated 13-1-79 addressed to Shri S. P. Roy stating that the concerned workmen were never the employees of the Collieries. The concerned workmen have no right for claiming their employment under the management. There was no relationship of employer and employee between the management and the concerned workmen and as such the present reference is not arising out of any industrial dispute. On the above facts it is prayed on behalf of the management that an Award be passed holding that the concerned workmen are not entitled to any relief.

The points for consideration are :—

- (1) Whether there was relationship of employer and employee between the management and the concerned workmen?
- (2) Whether the concerned workmen had worked in Katras Choitudih Colliery upto 22-2-72? and
- (3) Whether the management was justified in denying employment to the concerned workmen?

The management examined one witness and the workmen examined four witnesses in support of their respective case. The documents of the management are marked Ext. M-1 to M-7 series and the documents of the workmen marked Ext. W-1 and W-2.

Point No. 1 and 2

These points have been taken up together as they are inter connected. The management has produced Form B Register Ext. M-6 to M-6/7 and Bonus Registers of 1971 and 1972 of Katras Choitudih Colliery (Ext. M-7 series) to show that as the concerned workmen had not worked in Katras Choitudih Colliery, their names were not mentioned in Form B Register Ext. M-6 series and were not paid any bonus. The sheet anchor of the case of the concerned workmen is Ext. W-1 dated 18-3-78. This is a letter from Sri R. R. V. Sinha, Dy. Personnel Manager, to Shri S. P.

Ray, General Secretary, R.C.M.S. Dhanbad regarding the employment of Shri Parbali Mia and 9 other Miners/ (concerned workmen) of Katras Choitudih Colliery. This letter was sent with reference to the letter dated 14-12-78 of Shri S. P. Roy. It will appear from this letter that Shri R. R. V. Sinha, Dy. Personnel Manager of Area No. IV informed Shri S. P. Roy that Shri Parbali Mia and 9 other miners abandoned their employment on their own accord without any leave/permission from the management and that after leaving the employment from 22-2-72 they never intimated the management about their absence. Shri Sinha further stated in this letter that the said 10 concerned workmen did not approach the management for resumption of duties and there was no discussion on the said matter at any time by Katras Branch of R.C.M.S. of the management. Shri Sinha also gave another reason of not taking them in employment by stating that after such a long time the management is not in a position to help those miners who had absented and abandoned employment for such a long time. Now it is said on behalf of the management that the contents of the letter Ext. W-1 was not correct. The management has referred to the other letter of Shri R. R. V. Sinha, Dy. P.M. which is marked Ext. M-3 in the case. Ext. M-3 was written by Shri R. R. V. Sinha to Shri S. P. Roy, General Secretary of RCMS on 13-9-79 in respect of the stoppage of work of Shri Parbali Mia and 9 others. Shri Sinha has made reference to his letter dated 18-3-78 (Ext. W-1) and has stated that the Area Office was wrongly informed that the said 10 concerned workmen were in employment for sometime and subsequently abandoned the employment at their own accord. Shri Sinha further stated that they had enquired into the matter and it had been revealed from the record and the register that they were never in the employment at Katras Choitudih colliery and as such the question of re-employment of the 10 concerned persons did not arise. The question for determination now is whether the contents of Ext. W-1 or the contents of Ext. M-3 are correct. The most important witness on the point would have been Shri R. R. V. Sinha who could have thrown light as to the materials which were with him at the time when he had written Ext. W-1 to Shri S. P. Roy or when he had written Ext. M-3 to Shri S. P. Roy. Shri R. R. V. Sinha must have written Ext. W-1 on the basis of some materials before him and he was the only competent person to say as to what were those materials by which he was wrongly informed about the contents of the letter Ext. W-1. The details of the information given in Ext. W-1 very much supports the case of the concerned workmen whereas the contents of Ext. M-3 shows that the information given in Ext. M-1 was not correct. It appears that the management vide Ext. M-1 dated 13-5-78 and Ext. M-2 dated 2-6-78 was trying to falsify the facts stated in Ext. W-1. The management has examined MW-1 Shri Mahant Singh working as Bonus Clerk in Katras Choitudih Colliery. He has proved and exhibited all the documents on behalf of the management. He was working in the office and he was not in a position to say whether the concerned workmen had actually worked in Katras Choitudih Colliery prior to 22-2-72. He has stated that his office did not give in writing to the Personnel Officer that the names of the 10 concerned workmen was not mentioned in the registers. As such it appears that the office had not supplied any materials to Shri R. R. V. Sinha either at the time when Ext. W-1 or Ext. M-3 was written by him. MW-1 stated that the Personnel Manager had given him a list of workmen and had asked him to check if the names existed in the registers and thereafter he along with Shri A. K. Singh, Bonus Clerk had checked the registers to find out the names of the workmen of which list was given to them and they found that the names of the 10 concerned workmen were not mentioned in any of the registers. The said assertion made on behalf of MW-1 is believed if we refer to Bonus Register Ext. M-7/2 commencing from 2-2-71 to 23-10-71. At the beginning an index containing the names of the workmen who had been paid Bonus has been stated. On perusal of the said index and the relevant pages in which the details of payment of Bonus are shown, it will appear that the concerned workmen Idris Mia's Bonus account is shown at page No. 106 of Ext. M-7/2. Page 132 of the said Bonus register shows the Bonus account of the concerned workman Babul Mia, page 141 shows the Bonus account of the concerned workman Hussaini Mia, page 173 shows the Bonus account of the

concerned workman Idris Mia No. 2, page 42, shows the bonus account of the concerned workman Suleman Mia. Thus Ext. M-7/2 shows that the names of atleast 5 of the concerned workmen are mentioned in the Bonus Register and it will appear that all the 5 above named concerned workmen were paid Bonus in the 4th quarter of 1971. The management has filed 14 Bonus Registers in all and it is not possible to see each page of the said voluminous Bonus register and to exactly find out the names of the other concerned workmen. It was convenient for me to find out the name of the five concerned workmen as at the beginning an index containing the names of the workmen was mentioned and I verified the specific entries of those concerned workmen in the different pages. The other volumes of the Bonus Register do not all contain the index containing the names of the workmen whose bonus has been shown to have been paid in those different registers. I perused 2 Bonus Registers in which index of the workmen was stated in the beginning of the register but in those two registers I did not find the name of any of the concerned workmen. However, it was not possible for me to go through each page of all the voluminous bonus registers to examine whether the names of other 5 concerned workmen were mentioned in it. It would suffice to conclude at this stage the fact that it was not true that the names of all the concerned workmen were not mentioned in the Bonus Registers. As an example I had looked into the Bonus Register containing the index containing the names of the concerned workmen and I could find out the names of atleast 5 of the concerned workmen in one volume of the Bonus Register Ext. M-7/2. The management has filed the 14 volumes of Bonus Registers and 8 volumes of Form B Register and we do not know if there are other volumes of Bonus register and Form B Register of Katras Choitudih Colliery which have been withheld by the management. MW-1 has not stated that Form B Register Ext. M-6 series and Bonus Register Ext. M-7 series were the only volumes of the relevant period. Hence it cannot be ruled out that some of the volumes of Form B Register and Bonus Registers had been withheld by the management.

WW-1 Md. Anwarul Haque is a Mining Sirdar. He was working in Katras Choitudih Colliery since 1962. He has stated that there was one 11A seam in the East Pit mine which was a low seam with 4.5 ft height. He had worked as Mining Sirdar in the said 11 A seam. He has stated that the concerned workmen were working in 11-A seam pit Gurkia Khad prior to the take over and after the take over till February, 1972. He has stated that the said Gurkia Khad worked for sometime after February, 1972 and thereafter it was not worked and the minor/loaders working in it were engaged in other mine of BCCL. WW-4 Shri Hari Charan Bose was working as Bonus Clerk in Katras Choitudih Colliery in 1972. He has stated that there was one Gurkia Mine in Katras Choitudih Colliery whose seam No. was 11-A in which the concerned workmen were working. He has stated that he had prepared their quarterly bonus in the last quarter of 1971 and first quarter of 1972 for 2 months. We have found from the Bonus Registers Ext. M-7/2 that 5 concerned workmen were paid Bonus for the last quarter of 1971 and the evidence of WW-4 is fully corroborated by the Bonus Register Ext. M-7/2. Thus we find that there is documentary and oral evidence to show that the names of some of the concerned workmen were mentioned in the Bonus Registers of the last quarter of 1971 showing that they had been paid Bonus for the number of days they had worked. It appears therefore that Shri R. R. V. Sinha Dy. Personnel Manager had some materials before him when he wrote the letter Ext. W-1 and that he had not himself perused and verified the records of the Colliery to see whether the names of the concerned workmen existed in the register of the management. Had Shri R. R. V. Sinha looked into the records at the time when he wrote the letter Ext. M-3 denying the contents of his previous letter Ext. W-1 the registers would have shown that the names of the atleast some of the concerned workmen were mentioned in the management's register and it only required a thorough and vigorous checking of all the records and the registers to find out the names of all the concerned workmen who were working in Katras Choitudih Colliery.

WW-2 Parbali Mia and WW-3 Hussaini Mia are the two concerned workmen. Their evidence shows that they

had gone to their village home during Muharram festival of 1972 and that they had come to resume duty after the expiry of the leave but they were not allowed to join their duties. It will appear from the evidence of WW-1 and WW-3 that the concerned workmen had proceeded to their village home during Muharram after giving their leave application to their leader Shri Brajnandan Singh and that their leave was not allowed. It appears therefore that the management had treated them to have abandoned their work as they had absented for over 10 days which is a misconduct under the standing orders. A workman cannot be stopped from work for absenting without leave unless a disciplinary proceeding is drawn up against him in respect of the misconduct of absenting without leave. Ext. W-1 shows that the concerned workmen were not taken in employment as they had absented and abandoned employment for a long period. It is evident therefore from Ext. W-1 that the concerned workmen were not allowed to join their work as they had absented without leave and the management had treated them to have abandoned their job. The termination of the services of a workman without holding a domestic enquiry into the charges of misconduct of absenting without leave cannot be justified and the management appears to have erred in stopping their work without holding a domestic enquiry into the charges of misconduct of absentism without leave. WW-2 has specifically stated that the management did not service any charge-sheet on them when they returned to join after expiry of their leave.

The evidence discussed above will show that the concerned workmen had worked in Katras Choitudih colliery and it was for that reason that Shri R. V. Sinha had stated in Ext. W-1 that Shri Parbali Mia and 9 other miners abandoned their employment at their own accord without any leave/permission from the management and that after leaving employment from 22nd February, 1972 the concerned workmen never intimated the management about their absence and did not approach the management for resumption of duties. The letter of Shri R. V. Sinha Ext. M-3 cannot be relied upon in view of the evidence discussed above. I hold therefore that there was relationship of employer and employee between the management and the concerned workmen. I further hold that the concerned workmen had worked in Katras Choitudih colliery upto 22-2-72.

Point No. 3

It appears from the evidence discussed above that the work of the concerned workmen had been stopped by the management as they had absented without leave and permission after 22nd February, 1972. Admittedly, the concerned workmen had not been chargesheeted and proceeded upon for the misconduct of absenting without leave. The management therefore was not justified in stopping their work without holding domestic enquiry into the charge of misconduct against them. In the absence of any finding of established guilt of absentism without permission, the management was not justified in stopping their work and there appears to be no reason to justify the action of the management in stopping the work of the concerned workmen when they had turned up to resume their duties. It appears that the union had raised the dispute of the concerned workman for the first time on 14th February, 1978. It appears that there was a long gap of about 6 years in raising the industrial dispute and no explanation has been given as to why the industrial dispute was not raised earlier than 1978. I hold therefore, that the concerned workmen cannot claim their wages for the period prior to 1978 as they had not raised the dispute with the management and there is no document in support of the fact that the concerned workmen had raised the dispute earlier than 14th February, 1978. However, as admitted in para-6 of the W.S. of the management the union had raised the industrial dispute in the year 1978 and specific date is stated in the para-8 of the W.S. of the workmen where it is stated that the union had requested the management to allow the concerned workmen to join their original duties vide their letter dated 14th February, 1978. It is admitted that when the industrial dispute was first raised before the ALJ(C) and on failure report sent to the Government of India, the Government of India decided not to refer the said dispute for adjudication vide Ext. M-4. Subsequently industrial dispute was again raised by the union and thereafter the present dispute was referred to this Tribunal for adjudication. In view of the fact that the concerned workmen were stopped from work for misconduct without holding any enquiry it will be presumed that the concerned workmen con-

tinued in their job because of the fact that the stoppage of their work was unjustified. However, as the workmen did not raise their dispute prior to 1977 I do not feel justified in allowing the claim of back wages of the concerned workmen from the date of stoppage of their work till February, 1982. However, as the stoppage of the work of the concerned workmen was unjustified and the concerned workmen had raised the industrial dispute in February, 1978 they would be entitled to their wages from March, 1978.

In the result, I hold that the action of the management of Katras Choitudih Colliery of M/s. BCCL in denying employment to the 10 concerned workmen was not justified and it will be presumed that the concerned workmen had continued in their job as if their work was never stopped. The management is directed to allow the 10 concerned workmen to join their duties when they report to join their duty after one month from the date of publication of the Award and not beyond 2 months. The management is also directed to pay the arrears of back wages from March, 1978 onwards within one month from the date of joining of duties by the concerned workmen.

This is my Award.

I. N. SINHA, Presiding Officer
[No. L-20012(98)/85-D-III(A)/IR (Coal-I)]

का.प्र. 1486—प्रीयोगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, मैसर्स इंडियन आयरन एंड स्टील कंपनी लिमिटेड की चसनाला कोलियरी के प्रबन्धक से सम्बद्ध श्रमिकों और उनके कर्मचारों के बीच, अनुबन्ध में निम्नलिखित प्रीयोगिक विवाद में केन्द्रीय सरकार प्रीयोगिक अधिकरण (नं. 1) प्रवाद के पंचाट को प्रकाशित करती है।

S.O. 1486.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal (No. 1), Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the management of Chasnalla Colliery of M/s. Indian Iron and Steel Company Ltd. and their workmen, which was received by the Central Government.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947

Reference No. 35 of 1983

PARTIES :

Employers in relation to the management of Chasnalla Colliery of M/s. Indian Iron and Steel Co. Ltd., P.O. Chasnalla, Dist. Dhanbad.

AND

Their Workmen.

APPEARANCES :

For the Management—Sri R. S. Murthy, Advocate.

For the Workmen—Sri C. S. Choubey, Jt. General Secretary, C.F.L. Union.

STATE : Bihar

INDUSTRY : Coal

Dated, the 24th May, 1989

AWARD

The present reference arises out of Order No. L-20012/363/82-D.III (A) dated 29-4-1983, passed by the Central Government in respect of an industrial dispute between the parties mentioned above. The subject matter of the dispute has been specified in the Schedule to the said order and the said Schedule runs as follows :—

"Whether the action of the management of Chasnalla Colliery of Messrs Indian Iron and Steel Company Limited, P.O. Chasnalla District Dhanbad, in not departmentalising the services of 21 Sweepers, mentioned in the Annexure below, is justified? If not, to what relief are these workmen entitled?"

ANNEXURE

1. Shri Raju Handi,
2. Shri Hube Lal,
3. Shri Murari Lal,
4. Shri Fakira Balmiki,
5. Shri Bodi Nath,
6. Shri Verpat Balmiki,
7. Shri Kesham Balmiki,
8. Shri Rang Lal,
9. Shri Amar Balmiki,
10. Shri Mohan Handi,
11. Shri Sukbir Balmiki,
12. Shri Raja Ram Handi,
13. Shri Sudarshan Handi,
14. Shri Raghubir Handi,
15. Shri Bhola Handi,
16. Shri Rampha Handi,
17. Shri Vinod Handi,
18. Shri Hradhan Handi,
19. Shri Jagdish Handi,
20. Shri Kartik Handi,
21. Shri Harun Handi

2. The case of the management of M/s. Indian Iron and Steel Co. Ltd., Chasnalla, Dhanbad as appearing from the written settlement filed, details apart is as follows :—

3. There exists no relationship of employer and employee between the management and the persons named in the reference since they are apparently workers of contractor. The persons in question, who are apparently contractor's workers, are engaged by the contractor whenever their services were required, at any rate not continuously, in the residential township of the management at Chasnalla and in areas not falling within the definition of Mine as defined in Section 2(j) of the Mines Act. The Central Government is not the appropriate government for referring the dispute of this nature to an Industrial Tribunal for adjudication. Chasnalla Colliery is a captive mine of M/s. Indian Iron and Steel Co. Ltd. A serious tragedy in the mine occurred in 1975 which led to the death of several hundreds of workmen. The shaft mine of the Colliery suffered heavy damage due to the accident in 1975 and thereafter the management could not restore the normal working of the shaft mine. Because of this state of affairs in the shaft mine, the management was faced with the problem of surplus workers. Workmen could not be deployed for obvious reasons on jobs relating to sweeping or those performed ordinarily by sweepers of Jharia Mines Board of Health/Sindri Notified Area Authorities as Chasnalla is partly under Jharia Mines Board Health and partly under Sindri Notified Area Authority. The Colliery can hardly afford to keep on roll all the workers that they be required on a particular day, nor can it offer employment to them for all the days. In view of these circumstances the management had engaged a Contractor for executing, cleaning and sweeping jobs in certain areas outside the mine at times. It is reported that Murari Lal and 20 others are Contractors' labourers performing sweeping and cleaning jobs occasionally. Having regard to the requirement of the management and the man-power position, the management do not require the services of 21 persons nor can they afford to provide them employment on a long term basis. Chasnalla Colliery is suffering from heavy losses and the employment of additional man-power for whom there is no continuous job available will aggravate the losses and will cause a financial crisis for the management. The demand of the sponsoring union is for abolition of the Contract Labour System and absorption of the 21 persons in question in direct employment of the management. The abolition or otherwise of contract labour system is a matter for the appropriate government to decide and Industrial Tribunal has got no jurisdiction to adjudicate upon the disputes relating to abolition of contract labour.

In the context of these facts and circumstances the management has prayed that the instant reference be rejected.

4. The case of the concerned workman, as appearing from the written statement submitted by the President of the Coal-field Labour Union, briefly stated is as follows :

Raju Hari and 20 others were employed by the management of M/s. I.I.S. Co., at Chasnalla through their contractor. They were working as Sweeper and carrying the work throughout the year as their job was of permanent nature. Under the Contract Labour (Regulation and Abolition) Act, 1970, the job of permanent nature should not be entrusted to the contractors and deployment of the concerned workmen by the management ought to have been done much earlier. The workmen belong to Scheduled Tribe and has got better claim of being absorbed in permanent roll of the management. In the circumstances, the demand of the workmen is for their absorption in service by the management.

5. In the rejoinder to the written statement of the workmen the management has reiterated that there is absolutely no employer employee relationship between the management and the persons concerned. There is nothing in the Contract Labour (Regulation and Abolition) Act to support the contention of the workmen. The management has asserted its action in not absorbing the persons concerned in their employment is justified.

6. In the rejoinder to the written statement of the management the concerned workmen have stated that the management derived material gains through their work and so there is relationship of employer and employee between the management and them. The workmen carried on their work within the area covered by the mine and so the Central Government is empowered to refer the dispute for adjudication to Tribunal. The question of surplus workers is not a part of the reference. The concerned workmen had been working throughout the year without any break in their work. The workmen are not aware of losses; they are interested in deployment on permanent basis. The continuation or discontinuation of contract labour system is not a subject matter of adjudication and hence the defence taken by the management on this score is not sustainable.

7. The management has examined only one witness that is Sri P. K. Dev, Executive Engineer and laid in evidence a shaft of documents which have been marked as Exts. M-1 to M-3. On the other hand, the sponsoring union has examined Raja Ram Hari, one of the concerned workmen and laid in evidence a number of documents which have been marked as Exts. W-1 to W-3.

8. Shri R. S. Murthy, Advocate appearing for the management has contended that the sponsoring union has been demanding abolition of Contract Labour System in this reference and the Tribunal has got no authority to pass any award on the demand of the sponsoring union. He had further contended that under Section 10(2) of the Contract Labour (Regulation and Abolition) Act, 1970 the appropriate Government may, having regard to the conditions of work and benefits provided to the contract labour in that establishment and other relevant factors and after consultation with the Central Board or as the case may be a State Board prohibit by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment. In other words, the contention of Sri Murthy is that since the sponsoring union has been demanding abolition of Contract Labour System, the present reference by the Central Government is not maintainable since the Tribunal has got no jurisdiction to pass order for abolition of Contract Labour System. In support of his contention Sri Murthy has cited the case reported in 1971 Vol. 2-LLJ (S.C.) 567 (Vestals Pvt. Ltd. and the Workmen).

From the pleadings of the sponsoring union it is abundantly clear that the demand is not for continuation or discontinuation of Contract Labour System but for regularisation/departamentalisation of the services of the concerned workmen in the Colliery. Thus it is evident that the sponsoring union has not made demand for abolition of Contract Labour System.

It appears that the management has filed a shelf of photo copy of vouchers standing in the name of Sri D. S. Ojha, Con-

tractor, Chasnalla (Ext. M-1 series). MW-1 Sri P. K. Dey, Executive Engineer of M/s. Indian Iron and Steel Co. Ltd., at Chasnalla Colliery has stated that Sri Ojha is the oldest contractor, he has not stated that he is the only contractor engaged in the Colliery. On the other hand it appears from the documents filed by the sponsoring union that the union submitted the names of as many as seven Contractors before the A.L.C., Ext. W-2. No document has been submitted by the management to show that the management disputed this position either before the A.L.C. or elsewhere. Thus, I come to the conclusion that the management engaged more than one contractors for doing the contract work in the Colliery. There is no evidence to indicate that the job of sweeping was entrusted to one contractor only. That being so, on facts as well it is not sustainable that the sponsoring union has been demanding abolition of Contract Labour System in the job of sweeping.

In the decision cited by Sri Murthy, the demand for abolition of Contract Labour System was directly in issue and the Hon'ble Supreme Court held that the Industrial Tribunal got no jurisdiction to consider the question of abolition of Contract Labour System. The abolition of Contract Labour System is neither directly nor indirectly in issue in the present reference and hence the decision cited by Sri Murthy has got no manner of application in the context of facts and circumstances of the present case.

9. Sri Murthy has further submitted that the concerned persons listed in the reference are engaged by the contractor whenever their services required in the residential township of the management at Chasnalla and in areas not falling within the definition of mine as defined in Section 2(i) of the Mines Act and since the jurisdiction of the Central Government is confined only to mines, it is not the appropriate Government for referring this dispute to an Industrial Tribunal for adjudication.

Indeed there is not evidence to indicate that the concerned workmen are employed in the job of sweeping in any area of Chasnalla Colliery which can be considered as mine or part of a mine in accordance with the definition of mine as finds place in Section 2(i) of the Mines Act. In that view of the matter the present reference by the Central Government is hardly appropriate. But even so the case of the concerned workmen for departmentalisation of their services cannot be dismissed. The dispute relates to Chasnalla Colliery of M/s. Indian Iron and Steel Co. Ltd. Section 2(ee) of the Industrial Disputes Act defines 'controlled industry' as follows:

'Controlled Industry' means an industry the control of which by the Union has been declared by any Central Act to be expedient in the public interest.

Section 2 of the Industries (Development and Regulation) Act, 1951 envisages that the Union can declare where it is expedient in public interest to take under control the industries specified in the First Schedule. The First Schedule of the Act includes coal, lignite, coke and their derivatives as some of the industries which the Union has taken under its control as controlled industry. The Hon'ble Supreme Court has held in the case reported in 1960 1 IJ (Vol. 2) 272 that it is further necessary that the industries should be specified in this behalf, viz. for the purpose of Section 2(a)(j) as a controlled industry by the Central Government before the Central Government could become the appropriate Government within the meaning of Section 2(a)(i) of the Industrial Disputes Act in respect of such industry for the purpose of Industrial Disputes Act. The Central Government by issuing notification which appeared in the Gazette of India January 5, 1957, has declared the manufacture or production of coal including coke and other derivatives as a controlled industry under Section 2 of the Industrial Disputes Act. That being so, the manufacture or production of coal including coke and other derivatives is a controlled industry within the meaning of Section 2(ee) of the Industrial Disputes Act. Hence, the Central Government is competent to refer dispute of workmen employed in the industry engaged in the manufacture or production of coal, coke and other derivatives and activities incidentally connected with the main industry although the residential area of the industry does not fall within the definition of mine within the meaning of Mines Act.

10. The case of the sponsoring union is that the concerned workmen were employed by the management of M/s. Indian

Iron and Steel Co. Ltd., at Chasnalla through their contractor and the job of these workmen as Sweeper is of permanent nature. The management has stated in the written statement that the persons concerned in the present dispute are engaged by the contractor when their services were required, at any day not continuously, in the residential township of the management at Chasnalla. It has been stated further by the management that consequent upon a serious tragedy occurred in the mine in 1975, the shaft mine of the Colliery suffered very heavy damage and the management was faced with the problem of surplus workers. But these workers could not be deployed for obvious reasons on jobs relating to sweeping or those performed ordinarily by sweepers of Jharia Mines Board Health/Sindri Notified Area Authorities as Chasnalla is partly under Jharia Mines Board of Health and partly under Sindri Notified Area Authority.

From the evidence MW-1 Sri P. K. Dey, Executive Engineer of Chasnalla Colliery it appears that the Colliery has got 4 townships and that for sanitation work in the township they have got regular workers. His evidence further reveals that Jharia Mines Board of Health renders assistance to the Colliery management once in a year for cleaning the township. Thus it is evident from his evidence that the services rendered by Jharia Mines Board of Health are not of regular nature but once in a year. This witness has further admitted that now the total strength of the regular sweepers is 18. His evidence discloses that there are 4 colonies in Chasnalla Colliery, 3 of which are meant for the workmen of the colliery and the remaining one for the officers. He has admitted that some 2/3 buildings have come up besides the old ones. He has further admitted that cleaning of drains, sub-drains etc. and sweeping of the township area and colonies are jobs of permanent nature. He has also admitted that the duties of the concerned workmen are to sweep the township, remove ash, coal etc. and sludge from the septic tank, cleaning of drains of offices and colliery colonies. Their duties also include cleaning of main drain, sub-drains, branch drains, culvert of the township. He has also stated that generally the supervisor of the contractor looks after the work of concerned workmen. But the supervisor of the management also does the act of supervising their job. Then accosted in cross examination he has stated that he is not in a position to say if the total number of sweepers was 30 in 1964. Thus the evidence of this witness establishes the facts that (i) cleaning of drains, sub-drains and sweeping of the township areas and colonies are jobs of permanent nature and that (ii) duties of the concerned workmen are to sweep the township, remove ash, coal etc. and sludge from the septic tank, cleaning of drains of offices and colliery colonies, cleaning of main drain, sub-main drain, branch drains and culvert of the township and (iii) that the Jharia Mines Board of Health gave the management assistance once in a year to clean the township and (iv) that the supervisor of the management also does the act of supervising the job of the concerned workmen. According to him the total number of sweepers is now 18 and that he was not in a position to say whether the total strength of sweepers in 1964 was 30 or not and has stated that some 2 or 3 buildings have come up in the colliery area besides the old ones. He has admitted that the concerned workmen have been working for Chasnalla township which is a part and parcel of Chasnalla Colliery. By doing the acts of sweeping the township area and cleaning of main drain and sub-drains etc., the concerned workmen are engaged in work or operation which is incidentally connected with the main industry of the employer and that being so the present reference by the Central Government is competent (1963 Vol. 2 IJ page 436).

11. MW-1 has submitted photo copies of vouchers relating to payment made to Sri D. S. Ojha, Contractor, Chasnalla for February 1984, February 1985, June 1986, July 1986, July 1987, August 1987 and March 1988 (Ext. M-1 series). All these vouchers relate to only one contractor namely Sri D. S. Ojha and that too for period after the present reference was made. These vouchers indicate that the contractor was engaged for desludging of sludge from septic tank, soak pit, removal of brick bats ash, coal spoils etc. from the quarter in South and Kendra Colony area, removal of ash spoils etc. from main deep drain, sub-main drain and branch drain, culvert etc. etc. It appears that the sponsoring union supplied the names of as many as 7 contractors besides Sri Ojha employed by the management to do the work of sweeping by engaging workmen in the Colliery area (Ext. W-2). The management has not produced any voucher for payment to

any of these 7 contractors. Even so the vouchers produced by the management are indicative of the fact that the particular contractor was entrusted with desludging of sludge from septic tank, desludging of soak pits, removal of ash, coal etc. from the drains of South Colony and Kendra Colony, cleaning of ash spoils etc. from main drain, sub-main drain, branch drain, culvert etc. MW-1 has also admitted that the duties of the concerned workmen are to sweep the township, remove ash, coal etc. and sludge from septic tank, cleaning of main drain, sub-drains, branch drains and culvert of the township. In other words the documents Ext. W-1 series lends support to the evidence of MW-1 as to the nature of job performed by the workmen employed by the contractors. WW-1 Raja Ram Hari is one of the concerned workmen. He has stated that since 1975-76 they (he and the other listed workmen) have been working as sweepers in Chasnalla Colliery and that in the course of their duties they cleaned the main hole, main drain, latrines and drain of quarter area and they also sweep the roads of the workers' colonies of the company and the Colliery also. He has further stated that Chaturghan Prasad is their Supervisor and that he keeps their attendance and their attendance is kept in the attendance section of town Department and Chaturghan Prasad and Deo Saheb (meaning thereby MW-1 Sri P. K. Dey) made allotment of their duties. He has further stated that they removed the refuse of the main drain and dead carcass of animals by trolley provided by the company and that their duty is throughout the year and not seasonal or casual. He has further stated that the Contractor makes them payment after the receives the amount from the company and that their job is of permanent nature and the work performed by them will be required to perform even if their services are dispensed with. His evidence discloses that if the company stops making payment to the contractor they will be automatically out of employment and it will be very difficult for them to make out their livelihood. He has claimed that with the extension of quarters in Kendra Area, South Colony the workload relating to sweeping job has increased, but the company did not increase the sweepers roll. He has emphatically stated that the regular sweepers of the company keep clean bungalow, gardens and drains adjacent to the bungalow of the officers of the company. His emphatic statement is that the regular sweepers of the company raised dispute some 8 years ago objecting to the duty of cleaning of main drains of the colliery and quarters and since then they had stopped doing cleaning the same. He has not been cross-examined on this point.

12. Thus the evidence disclosed boils out to the following facts :

- (i) that the Chasnalla Colliery has got a regular strength of sweepers numbering 18.
- (ii) that the building complex of the colliery has been extended.
- (iii) that the cleaning of drains, sub-drains of township areas and colonies are jobs of permanent nature.
- (iv) that the duties of the concerned workmen as sweepers are to sweep the township, remove ash, vised by the supervisor of the management and; drains of offices and colliery colonies, cleaning of main drain, sub-drains, branch drains and culverts
- (v) that the work of the concerned workmen is supervised by the supervisor of the management and
- (vi) that the source of income of the concerned workmen will be checked off if the engagement of contractor is dispensed with.

It has been decided by the Hon'ble Supreme Court in the case reported in 1978 Lab. I.C. page 1264 that where a worker or group of workers labours to produce goods or services and these goods or services are for the business of another, that other is, in fact, the employee and this employer has got economic control over the workers' subsistence, skill has got economic control over the workers' subsistence, chokes off, the worker is, virtually laid off. The presence of intermediate contractors with whom along the workers have immediate or direct relationship ex-contractu is of no consequence when, on lifting the veil or looking at the

conspectus of factors governing employment, it is found, though draped in different perfect paper arrangement, that the real employer is the management, not the immediate contractor.

13. Applying these guidelines, I am constrained to hold that the concerned workmen are in reality the workmen of the management though they have immediate or direct relationship with the contractor.

14. Perhaps the management was not oblivious of the position. It appears that the union has been agitating over the issue of departmentalisation of the concerned workmen for a pretty long time. Letter of the sponsoring union to the C.M.E. (Colliery), Chasnalla Colliery, Dhanbad dated 31-12-80 Ext. W-2/2, letter of the union to the A.L.C. dated 21-5-82 Ext. W-2/1 and again the letter of the Secretary to the A.L.C., dated 13-7-82 Ext. W-2 will bear out this position. The union had a discussion with the management over the matter. The photostat copy of the note sheets of the management dated 2-2-82 (Ext. W-1), dated 6-10-82 (Ext. W-1/1) and dated 20-12-83 (Ext. W-1/2) disclose that the union demanded that the sweepers working in the Town Department should be made permanent and the management agreed to look into the matter and settle the same. But ultimately nothing has come out.

15. In the circumstances, I am constrained to hold that the concerned workmen are really the workmen of the management and management should departmentalise their services.

16. There is no dispute about the fact that a tragic disaster occurred in Chasnalla Colliery in 1975 leading to the death of several hundreds of workmen and closure of shaft mine. The Company, since then has been under severe financial constraints. Even so, the Company is under obligation to departmentalise the services of the concerned workmen and they cannot abjure their obligations on the plea of financial constraints. Nevertheless the management should be given a breathing time so that it could departmentalise the concerned workmen and take on additional financial burden and in this view of the matter, I consider that the management should departmentalise the services of the concerned workmen within a space of six months from the date of publication of award.

17. Accordingly the following is rendered.

The action of the management of M/s. Indian Iron & Steel Co. Ltd., in not departmentalising the services of the concerned workmen is unjustified. The management is directed to departmentalise the services of the concerned workmen gradually within the course of six months from the date of publication of the award.

In the circumstances of the case I award accordingly.

S. K. MITRA, Presiding Officer

[No. I-20012(368)82-D. III(A)/IR(Coal-I)]

K. J. DYVA PRASAD, Desk Officer

नई दिल्ली, 9 जून, 1989

का.प्र. 1487 :—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार व स्टेट बैंक आफ इंडिया के प्रबन्ध संत में संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, न्यायालय सं-1 बम्बई के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 01-6-89 को प्राप्त हुआ था।

New Delhi, the 9th June, 1989

S.O. 1487.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal No. 1. Bombay, as shown in the Annexure in the industrial dispute between the emplyee in relation to the management of State Bank of India and their workmen, which was received by the Central Government on 1-6-1989.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1 AT BOMBAY

Reference No.CGIT-47 of 1988

PARTIES :

Employers in relation to the management of State Bank of India, Deputy General Manager, Bombay main

AND

Their workmen.

APPEARANCES :

For the Management—Mr. Chavan. Personnel Officer.

For the Workmen—No appearance.

INDUSTRY : Banking

STATE : Maharashtra

Bombay, dated the 2nd of March, 1989

AWARD

The Central Government in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, has referred the following dispute for adjudication to this Tribunal :—

"Whether the action of the management of State Bank of India in terminating services of Shri A. K. Jaiker, Typist-Clerk with effect from 7th March, 1972 is legal and justified? If not, to what relief the workman is entitled?"

2. The second party Shri A. K. Jaiker, remained absent though duly served. Hence the reference was directed to be heard *ex parte* against him. The workman did not respond even to the notice of *ex parte* hearing which was duly served on him. The Deputy General Manager of the first party Bank first filed a preliminary written statement praying that the reference may be dismissed on the grounds of gross laches and delay and thereafter reluctantly filed statement of claim cum-written statement on behalf of the Bank. It appears from the recitals in sub para (a) of paragraph (1) of the written statement that the Deputy General Manager laboured under an impression that as the workman was absent and was thus not interested in the reference the Bank was not obliged to file any statement of claim in respect of the reference and that it was obliged to do so in view of the direction to that effect of this Tribunal. This impression is wrong. If the Bank would not have filed its statement of claim the reference would have been heard *ex parte* against the Bank also. The Bank was bound to place on record of the reference, all the material facts in respect of the nature of the employment of the workman, the manner in which the services of the workman were put an end to and the justification for such an action.

3. The prayer made in the preliminary written statement filed by the Bank that the reference should be dismissed as being barred on the ground of laches and delay is not legal. Reference cannot be rejected by the Tribunal, it has to be answered. The Tribunal has no jurisdiction to quash the reference. Moreover, there is no limitation prescribed within which the Government must make a reference. Hence the reference cannot be considered as bad in law, merely because the Government chose to make a reference in August, 1988 in respect of the termination effected in March, 1972. The fact that the workman chose to remain absent and did not file his statement of claim would not prevent this Tribunal from adjudicating upon the termination and setting it aside if it is found to be illegal.

4. According to the Bank, the workman was a casual workman and his services were not terminated by the Bank. What was done in his case was that as no work was available, he was not given any work with effect from 7-3-1972. This action itself amounts to termination and it was not necessary that there should have been a written order of termination.

5. There is however nothing on record to show that the workman had worked for 240 days in 12 calendar months before the termination and was thus in continuous service of the Bank for a year within the meaning of section 25B of the Industrial Disputes Act, 1947. Hence the procedure prescribed in section 25-F was not required to be followed in his case and the termination effected by adopting the mode of not giving any casual work to the workman cannot be said to be illegal and the workman would not be entitled to reinstatement on this footing. The workman therefore would not be entitled to any relief in this reference. Award accordingly.

M. S. JAMDAR, Presiding Officer
[No. L-12012/176/88-D.III(A)]

नई दिल्ली, 13 जून, 1989

का.प्र. 1488—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार व स्टेट बैंक आफ इंदोर भोपाल के प्रबन्धन के संबंध निोजकों और उनके कामकाजों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर न्यायलय के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-6-89 को प्राप्त हुआ था।

New Delhi, the 13th June, 1989

S.O. 1488.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure in the industrial dispute between the employers in relation to the management of State Bank of Indore, Bhopal and their workmen, which was received by the Central Government on 8-6-89.

ANNEXURE

BEFORE SHRI ARJAN DEV, PRESIDING OFFICER
CENTRAL GOVT. INDUSTRIAL TRIBUNAL CUM-
LABOUR COURT, KANPUR

Industrial Dispute No. 115 of 1988

In the matter of dispute between :

Asstt. General Secretary,

N.C.B.E.

C/o State Bank of India,

Mahal Chowk,

Alwar-301001.

...Petitioner.

AND

The Regional Manager,

State Bank of Indore,

Region-III,

4, Maharana Pratap Nagar,

Road House,

Bhopal (M.P.)

...Opp. party

AWARD

1. The Central Government, Ministry of Labour, vide its notification no. L-12012/845/88-D. III(A) dt. 7-9-88, has referred the following dispute for adjudication to this Tribunal for adjudication :—

"Whether the action of the management of State Bank of Indore, Bhopal is justified in not continuing in service the workmen, Shri Mukesh Srivastava and Miss Alka Ahuja from 15-2-84 and 2-10-86 respectively? If not, to what relief are the workmen entitled?"

2. In the instant case several dates were given to the workmen for filing of claim statement but till 5-5-89 no claim statement was filed by the workman. On 5-5-89 none was present from the side of the workmen.

3. As such it appears that the workman is not interested in contesting the case. In the circumstances of the case a no claim award is given in favour of the workman.

4. Reference is answered accordingly.

ARIAN DEV, Presiding Officer
[No. L-12012/845/88-D III(A)]

नई दिल्ली, 15 जून, 1989

का. आ. 1489.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, स्टेट बैंक आफ इण्डिया मद्रास के प्रबन्धन के संबंध निर्यातकों और उनके कर्मचारों के बीच, अनुबंध में निश्चित औद्योगिक विवाद में औद्योगिक अधिकरण तमिलनाडु मद्रास के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को, 13-6-89 को प्राप्त हुआ था।

New Delhi, the 15th June, 1989

S.O. 1489.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the following award of the Industrial Tribunal Tamil Nadu, Madras as shown in the Annexure in the industrial dispute between the employers in relation to the management of State Bank of India, Madurai (T.N.) and their workmen, which was received by the Central Government on 13-6-89.

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL, TAMILNADU MADRAS

Monday, the 17th day of April, 1989

Industrial Dispute No. 35 of 1985

(In the matter of the dispute for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947 between the workman and the Management of State Bank of India, Madurai).

BETWEEN

Thiru M. Jeniston Deviraj, C/o Kosammal, Charode,
Thacklay, Kanyakumari District-629175.

AND

The Chief Regional Manager, State Bank of India,
Regional Office, Madurai.

REFERENCE.

Order No. L-42012/297/84-D.II(A) dated 20-5-85 of the Ministry of Labour, Government of India, New Delhi.

This dispute after restoration coming on for final hearing on Wednesday, the 16th day of November, 1989 upon perusing the reference, claim and counter statements and all other material papers on record and upon hearing the arguments of Tvl D. Murugesan and P. Sankaran Advocates appearing for the workman and of Tvl T. S. Gopalan, P. Ibrahim Kalifullan, S. Ravindran and N. C. Srinivasavardhan, Advocates for the management and his dispute having stood over till this day for consideration, this Tribunal made the following Award :

AWARD

This dispute between the workman and the management of State Bank of India, Madurai arises out of a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947 by the Government of India in its Order No L-12012/297/84-DII(A), dated 20-5-1985 for adjudication of the following issue :

"Whether the action of the management of State Bank of India in terminating the services of Shri M. Jeniston Deviraj, Clerk in their Nagercoil Branch, w.e.f. 15-7-81 is justified? If not, to what relief is the workman concerned entitled?"

2. The Petitioner avers that the Petitioner was a clerk at Nagercoil Branch in the Respondent-Bank from 1963 till 15-7-1981 when he was terminated from services. The Petitioner was active member of the Union and he always stood in the fore front in the trade Union activities and hence one Sri Kadaksham an Officer who went to the extent of holding out threats to his life he did not stop his criticism and other union activities. The said Kadaksham also tried to knock the petitioner down by his car. The Petitioner was mentally ill and taking advantage of that incident on 31-7-1980, he was suspended and after charge-sheeted, an exparte enquiry was held and was removed from service. The Petitioner was forced to enter into Rama-krishna Charitable Hospital at Trivandrum in December, 1981 and it was diagnosed as Paranoid Psychoses and subsequently declared fit in March, 1982. The Petitioner appealed to the Chief Regional Manager with no desired effect. The Petitioner was not given reasonable opportunity by the Enquiry Officer to defend himself against the charges levelled against him. The Petitioner there upon approached the Assistant Labour Commissioner (Central) Trivandrum, who reported failure of conciliation in December, 1984. The Petitioner prays this Tribunal to pass an award holding that the termination of the Petitioner from service is not justified and directing the Bank to reinstate him with all benefits.

3. The Respondent in its counter statement states that it would appear that the Petitioner was inimically disposed of towards Kadaksham, Field Officer attached to Nagercoil Branch of the Respondent Bank. While so on 31-7-1980 at about 9.50 A.M. the said officer entered the Branch through the back entrance of the building and he was followed by the Petitioner using abusive words and when Kadaksham proceeded to his seat, the Petitioner was also followed him by using filthy language, thereupon Kadaksham in order to avoid the Petitioner went inside the Branch Manager's room. After while he came out of the Branch Manager's room, the Petitioner pounced upon him and assaulted him. They were separated by the Branch Manager and members of the other staff. As the Branch Manager was talking to another staff member, the Petitioner rushed into the Branch Manager's room and picked up a tray and attempted to assault Kadaksham. Thereupon he was placed under suspension and chargesheet was also issued charging with grave misconduct. After getting explanation, an enquiry was held. The Petitioner did not appear for the enquiry. The Enquiry Officer gave his findings holding that the charge against the Petitioner was proved. Subsequently the Petitioner was asked for appearing for personal hearing but he did not appear and thereupon orders were passed discharging the petitioner from service with immediate effect as provided for in part 521(5)(e) of the Sastry Award and after giving the order of discharge, the petitioner did not challenge the order of discharge, and it is become final. While so after 8 months, all on a sudden, on 13-3-1982, a letter was addressed by the Petitioner to the Chief Regional Manager, State Bank of India, Madurai requesting him to review the order on the ground that everything had happened without his being conscious of the same. He also enclosed a Medical Certificate from one Dr. M. S. Sivakumar stating that he was treated for "Paranoid Psychoses" and he was fit to resume duty. The Petitioner's appeal was also rejected on the ground that it was time-barred. This dispute was raised nearly after two years and the same should not have been entertained on the ground of inaction and laches on the part of the Petitioner. The Petitioner was given every opportunity to meet the allegation against him to participate in enquiry. The Respondent does not admit that the behaviour of the Petitioner on 31-7-1980 was not because of any mental sickness. It was a pre-planned attack on the officer. Hence the application is liable to be dismissed.

5. The point for determination is: whether the termination of the Petitioner from service is justified? If so what relief?

5. Ex. W-1 to W-10 and M-1 to M-30 were marked by consent. No oral evidence was adduced on either side.

6. The Petitioner has been charge-sheeted under M-12 by the Respondent Bank on the basis of the complaint received under M-3. It is seen from M-12, the charge-sheet, that the Petitioner on 31-7-1980 at about 10 A.M. shouted in filthy language and assaulted K. Kadaksham, Field Officer of the Branch in the Banking Hall, in front of the Branch Manager's Room and shortly thereafter rushed into the Branch Manager's Room, where Kadaksham was sitting and attempted to hurl a letter tray and attacked him. M-1 is the preliminary investigating report submitted by the Branch Manager about the incident. The charge relates to gross misconduct under paragraphs 521(4)(c) and (j) of the Sastri Award. In the explanation the Petitioner has stated that the said Kadaksham was chasing him with his motor car and tried to dash against him and because of it he made a quarrel. Before going into the merits of the case it has to be seen whether as alleged by the petitioner, he was not given any opportunity to defend his case is true. In this case, M-15 is the notice of the Enquiry dated 14-12-80 fixing enquiry on 24-12-80. The Petitioner refused to receive the enquiry notice. It is seen from M-16 the letter of the Branch Manager, Nagercoil intimating the same to the Enquiry Officer. It is seen from the letter "the cover was returned" with the remarks "refused—Returned to Sender". Since the Petitioner refused to receive the Enquiry Notice and also did not appear on 24-12-80, the Enquiry was adjourned to 6-1-81 as per the notice dated 26-12-80 under M. 17. Even on 6-1-81 the Petitioner did not care to appear and hence again the enquiry was adjourned to 23-1-81 as per intimation sent under M-18. On 23-1-81 the Enquiry went on Ex parte. The Enquiry Officer at page 27 in the Enquiry Proceedings M-19 has stated that the Enquiry Officer and Prosecuting Officer were present but the Petitioner did not appear at the enquiry upto 12-15 p.m. although he was present at the premises of the Bank and he was informed of the enquiry by the Enquiry Officer through the Branch Duffador Ganesan. Hence the Enquiry Officer proceeded with the enquiry by examining the witnesses present at that time on behalf of the Management and concluded the enquiry. Now at this stage, the contention raised by the learned counsel for the petitioner is that he was not given ample opportunity. It cannot be accepted for the simple reason, everytime the enquiry was adjourned to accommodate the petitioner. The notice was also sent but on the other hand the petitioner chose to refuse to receive the same notwithstanding that he did not care to appear. As a matter of fact the third sitting was fixed on 23-1-81. Eventhough the petitioner was present in the bank premises even after informing the fact of enquiry by the Enquiry Officer he did not care about it. It is seen that he was not interested in the enquiry. Therefore it cannot be contended that due to non-giving of opportunity by the enquiry officer was vitiated. The contention that he was suffering from mental illness on 31-7-80 when the incident took place and subsequently was not raised before the Enquiry Officer by the Respondent at any time. The enquiry was over on the basis of findings given by the Enquiry Officer under M-19. The Respondent sent show cause notice under M-21 dated 12-10-81 asking the petitioner to appear for personal hearing against the proposed punishment for discharging from service on 29-5-81. The covering letter sent for personal hearing was also returned with the endorsement "refused" under M-22. Again the personal hearing was adjourned to 23-6-81 under M-23. Though the hearing was adjourned to accommodate the petitioner, he did not appear for personal hearing even on 23-6-81. Therefore he was discharged from service under M-24 order dated 15-7-81. It is thus seen that even at the subsequent stage, after enquiry, also the petitioner did not care to appear. While so it is curious to raise objection that he was not given ample opportunities to appear before the Enquiry Officer. It is seen from the findings given by the Enquiry Officer under M-19 has categorically stated that in spite of ample chances given to him, even the Petitioner avoided to appear before the Enquiry Officer. It is thus seen in the absence of petitioner appearing before the Enquiry Officer and depending the charges has no alternative for the Enquiry Officer except to accept the testimonies of Management witnesses. It is also significant to note that the evidence of the Management witnesses remains uncontradicted. The witnesses have not been cross-examined

by the Petitioner since the Petitioner did not appear before the Enquiry Officer. It is not shown how the finding of the Enquiry Officer is perverse. In the circumstances, no prudent man would have come to any other conclusion other than one that was found by the Enquiry Officer on the basis of materials placed before him.

7. The learned counsel for the Petitioner contended that he was suffering from mental sickness when the incident took place and also during the period dated 23-6-81 when the personal hearing was fixed. It is relevant to note that this plea was not made either before the Enquiry Officer or the Mental Hospital on 27-10-81, long after the discharge before the Respondent. Even according to him he was in the Mental Hospital on 27-10-81, long after the discharge was made. Therefore the contention that the incident took place unconsciously cannot be accepted by any stretch of imagination. It is also pointed out by the learned counsel for Petitioner that paragraphs 521(9) of the Sastri Award provides that decision about commencement of disciplinary action should be communicated within three days from the date of incident but in this case though the incident took place on 31-7-1980 the disciplinary action was initiated only on 4-8-80. But it is seen from paragraphs 521(9) of Sastri Award, it says "When it is decided to take any disciplinary action against an employee, such decision shall be communicated to him within 3 days thereof". Here the period of 3 days refers to only the proposed date of disciplinary action. In this case the proposal to take disciplinary action was on 4-8-80 as can be seen from M-9 and was communicated on the same date. Therefore, there is no violation of paragraph 521(9) of Sastri Award. Paragraph 521(9) is only a directive and not a mandatory. Another argument of the Petitioner's counsel is that his conduct would not attract paragraph 521(4)(c) and 521(4)(j) namely doing any act prejudicial to the interests of the Bank. So long as the conduct of the Petitioner, which gave rise to the disciplinary action, is reprehensible. It is an act prejudicial to the interests of the Bank. The applicability or non-applicability of particulars of misconduct would not vitiate the order of discharge. The learned counsel for the Petitioner also urged that the previous record of service of an employee should be considered under paragraph 521(6)(c) of the Sastri Award. In other words the past record of services of the Petitioner was not considered by the Respondent. In this connection, the learned counsel for the Respondent relied on 1968-I.L.L.J. page 765 to show when the misconduct is serious, past record is irrelevant. In that case workers went on an illegal strike during the period when a valid settlement was in force and was taken up and referred to Labour Court for adjudication. The Labour Court found that the workers had engaged themselves in illegal strike in contravention of the Standing Orders. But the Labour Court was of the view that the failure of the management to obtain approval of their action to dismiss, vitiated the order of dismissal. It also took the view that the Management in dismissing the workers, did not have due regard to the requirements of Standing Order 16(d). The High Court while setting aside the order of Labour Court held the misconduct per se was sufficient to justify the dismissal because of serious nature. There is no scope at all for entertaining any apprehension that the management failed to give due weight to past good conduct or that if it had done so, a different result would have followed. The decision is an unambiguous so far that when the misconduct was so serious, the management need not consider the past good conduct. In this case, the Management under M-24, the order of dismissal says that the Regional Manager namely the Disciplinary Authority says that he reconsidered the matter and full satisfied that the punishment of "Discharge" from service without notice as proposed in his letter is just and proper and hence the petitioner was discharged from service with immediate effect. It is true that the past conduct has not been considered. But by considering the charges that were very serious nature would only show that the Management could not come to any other decision even if the past conduct was relevant. But in view of the law laid down in the above decision that while the misconduct is serious the past record is irrelevant, it cannot be held that the order of dismissal is not valid for that reason.

8. For all these reasons this point is found against the Petitioner

9. In the result an award is passed rejecting the claim of Petitioner, justifying the action of the Management in terminating the service of petitioner. No costs.

Dated, the 17th day of April, 1989.

Sd/-

Industrial Tribunal

[No. L-12012/297/84-D.IIA/D.IIIA]

P. V. SREEDHARAN, Desk Officer

WITNESS EXAMINED :

For both sides : None.

DOCUMENTS MARKED :

For workman :

- Ex. W-1/12-3-82—Certificate issued by Dr. M. S Shiva-Kumar, Sri Ramakrishna Ashrama Charitable Hospital, Sasthamangalam, Trivandrum-695010.
- Ex. W-2/18-3-82—Letter from the Petitioner-workman to the Management-Bank.
- Ex. W-3/18-5-82—Letter from the Petitioner-workman to the Management-Bank.
- Ex. W-4/7-7-82—Letter from the Petitioner-workman to the Management-Bank.
- Ex. W-5/12-10-82—Letter from the Petitioner workman to the Management-Bank.
- Ex. W-6/20-11-82—Letter from the Petitioner-workman to the Management-Bank.
- Ex. W-7/24-2-83—Letter from the Petitioner-workman to the Management-Bank.
- Ex. W-8/13-4-83—Letter from the Petitioner-workman to the Management-Bank.
- Ex. W-9/17-11-89—Certificate issued by Dr. K. Ponniah, Kumaran Vaidyasalai, HO Manali, Thuckalay.
- Ex. W-10/22-11-89—Certificate issued by Dr. Jayasekaran, Medical Trust Jyasekharan Hospital and Nursing Home, Nagercoil.

For Management :

- Ex. M-1—Preliminary Investigation Report by the Branch Manager of the Management-Bank (copy).
- Ex. M-2/31-7-80—Letter from the Branch Manager, Nagercoil Branch to the Regional Manager of the Management-Bank regarding the Petitioner's violent behaviour (copy).
- Ex. M-3/31-7-80—Letter from Thiru K. Kadakshan, to the Branch Manager of the Management-Bank, Nagercoil Branch (copy).
- Ex. M-4/ — Statement of Thiru P Athiappan (copy).
- Ex. M-5/31-7-80—Statement of Mr. K. Sukumaran Nair (copy)
- Ex. M-6/1-8-80—Statement of Mr. Jayachandran (copy)
- Ex. M-7/1-8-80—Statement of Mr. Rajendran (copy).
- Ex. M-8 — Letter from Branch Manager, State Bank of India, Nagercoil to the Regional Manager of the Respondent-Bank (copy).
- Ex. M-9/4-8-80—Suspension order issued to the Petitioner-workman (copy).
- Ex. M-10/19-8-80—Letter from the Petitioner-workman to Respondent-Bank, Nagercoil Branch (copy).
- Ex. M-11/10-9-80—Letter from the Petitioner-workman to Respondent Bank, Nagercoil Branch (copy).
- Ex. M-12/15-10-80—Charge-sheet issued to the Petitioner-workman (copy).

Ex. M-13/ — Reply by the Petitioner-workman to M-12 (copy).

Ex. M-14/28-11-80—Letter from Respondent-Bank to the Petitioner-workman regarding the enquiry (copy).

Ex. M-15/14-12-80—Enquiry Notice issued to the Petitioner-workman (copy).

Ex. M-16/18-12-80—Letter from Branch Manager, State Bank of India, Nagercoil to the Branch Manager, State Bank of India, Tuticorin regarding the Petitioner-workman's refusal to receive the letter dt 14-12-80 (copy).

Ex. M-17/26-12-80—Letter from Enquiry Officer to the Petitioner-workman regarding the enquiry (copy).

Ex. M-18/8-1-81—Letter from Enquiry Officer to the Petitioner workman regarding the enquiry (copy).

Ex. M-19/ — —Proceedings of the Enquiry Officer (copy).

Ex. M-20/ — —Findings of the Enquiry Officer (copy).

Ex. M-21/12-5-81—Letter from Respondent-Bank to the Petitioner-workman regarding personal hearing (copy).

Ex. M-22/3-6-81—Letter from the Branch Manager, State Bank of India, Nagercoil to the Respondent-Bank regarding the Petitioner-workman's refusal to receive the enquiry proceedings and findings (copy).

Ex. M-23/4-6-81—Letter from the Respondent Bank to the Petitioner-workman regarding the personal hearing (copy).

Ex. M-24/15-7-81—Dismissal Order (copy).

Ex. M-25/13-3-82—Letter from the Petitioner-workman to the Respondent-Bank to review the dismissal Order (copy).

Ex. M-26 —Letter from Respondent-Bank to the Petitioner-workman (copy).

Ex. M-27/26-9-83—Letter from the Respondent-Bank to the Petitioner-workman regarding Petitioner-workman's appeal (copy).

Ex. M-28/10-8-84—Order of the Dy. Commissioner of Labour dismissing the application in TNSE application No. 25/83 (copy).

Ex. M-29/9-10-84—Petition filed by the Petitioner-workman u/s 2-A of the I.D. Act before the Asstt. Labour Commissioner (Central), Trivandrum (copy).

Ex. M-30/17-12-84—Conciliation Failure Report (copy).

Sd/-

Industrial Tribunal

नई दिल्ली, 12 जून, 1989

का.प्र. 1490 :- औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पारादीप पोर्ट ट्रस्ट, पारादीप के प्रबन्धन में सम्बन्धित नियोजकों और उनके कर्मचारियों के बीच, अनुबन्ध में निश्चित औद्योगिक विवाद में औद्योगिक अधिकरण, भुवनेश्वर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 5-6-89 को प्राप्त हुआ था।

New Delhi, the 12th June, 1989

S.O. 1490.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Bhubaneswar as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Paradip Port Trust, Paradip and their workmen, which was received by the Central Government on the 5-6-89.

ANNEXURE

INDUSTRIAL TRIBUNAL, ORISSA, BHUBANESHWAR,
CAMP AT PARADEEP

Industrial Dispute Case No. 36 of 1988 (Central)

Dated, Bhubaneswar, the 20th May, 1989

BETWEEN

The Management of Paradip Port Trust, Paradip—First
Party-Management.

AND

Their workman Shri Ganeswar Rout,
Mazdoor No. 106/288
represented through the
Paradip Port & Dock Mazdoor
Union, Paradip—Second party-Workman.

APPEARANCES :

Shri H. K. Mohanty, Legal Officer, Paradip Port Trust.
—For the First Party-Management.
Shri N. C. Panda, Vice President,
& Shri B. C. Parida, Jt. Secretary,
Paradip Port & Dock Mazdoor,
Union, Paradip—For the Second Party-Workman.

AWARD

The Government of India in the Ministry of Labour, in exercise of the powers conferred upon them by clause (d) of sub-section (i) and sub-section (1A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) and by their order No. L-38011/3/87-D.IV(A) dated 13-9-1988 have referred the following dispute for adjudication by this Tribunal:

“Whether the action of the management of Paradip Port Trust in suspending Shri Ganeswar Rout, Mazdoor No. 106/288 for one day as punishment is lawful and justified? If not, to what relief the workman is entitled to?”

2. As would appear from the statement of claims filed by the Vice-President of the Paradip Port & Dock Mazdoor Union, the workman Sri Rout who had been working as a Mazdoor in Paradip Port was called upon on 10-12-86 to submit an explanation within forty eight hours as to why disciplinary action would not be taken against him for an act of misconduct committed by him on 1-12-86. The alleged misconduct was that he misbehaved and abused one of the Supervisory staff on the said day. The workman Shri Rout submitted explanation denying the allegation. The explanation was not found satisfactory by the Additional Traffic Manager, Paradip Port Trust and he was put under suspension for one day on 15-1-87 with loss of wages by way of punishment.

It is alleged in the statement of claims that the Paradip Port & Dock Mazdoor Union protested against the illegal action of the management of the Paradip Port Trust but they were intimidated by the Additional Traffic Manager that the penalty imposed on Shri Rout was in accordance with Rule 25 of the C.H.W. Regulation and Employment Scheme, 1979. It is further alleged that the punishment was inflicted against the workman without any enquiry and as such, it was bad and should be vacated.

3. The management of the Paradip Port Trust filed written statement stating, inter alia, that on 1-2-86 while Shri Rout was on duty he misbehaved with Shri B. S. Mohapatra, the then Traffic Foreman/shift incharge, who reported the matter to the appropriate authority and thereafter Shri Rout was served with a show cause notice on 9-12-86, to which he submitted his explanation on 30-12-86. The matter, according to the Paradeep Port Trust-management, was duly investigated by the Senior Officers of the Traffic Department who found Shri Rout guilty of commission of the alleged misconduct and thereafter Shri Rout was placed under suspension for one day in accordance with Rule 25 of the C.H.W. Regulation and Employment Scheme, 1979. The management of Paradip Port Trust contended in the written statement that the order of suspension for one day as a major punishment imposed on Shri Rout is lawful and justified.

4. On these pleadings the following two issues were framed:—

ISSUES

(1) If the action of the Management of Paradip Port Trust in suspending Shri Ganeswar Rout, Mazdoor for one day as per the order passed by the Additional Traffic Manager, Paradip Port Trust on 13-1-87 on grounds of misconduct is legal and/or justified?

(2) To what relief, if any, the second party-workman is entitled?

5. The matter was posted for hearing on 27-3-89 at Paradip. In course of hearing it was ascertained from the legal Officer of the Paradip Port Trust that suspension for one day imposed on the second party-workman Shri Rout was by way of punishment for misconduct committed by him but there was no formal enquiry conducted with regard to the alleged misconduct preceding imposition of the punishment. It was also submitted that the management of the Paradip Port Trust was desirous of revoking the order of suspension and paying one day wage to the second party-workman. The matter was accordingly adjourned to 10-day for filing of settlement by both parties or for hearing of the reference on merits.

6. Today, a memorandum of settlement drawn up in Form 'M' is filed by the Legal Officer of the Paradip Port Trust signed by the Traffic Manager on 19-5-89 with a request to record the settlement and dispose of the reference in terms of the settlement. The settlement is not signed on behalf of the second party-workmen by the union representative who have opposed the settlement and have prayed that an award be passed revoking the order of suspension passed against him illegally and directing payment of all legal dues to the second party-workman.

On a perusal of the memorandum of settlement filed by the first party-management, I find that it is admitted that the punishment of suspension was imposed on Shri Rout without conducting any regular enquiry. In view of such admission, the order of suspension for one day passed in respect of the second party-workman as a measure of punishment is bound to be held to be illegal and unjustified. After having heard the representatives of both parties, I hold that the action of the management of Paradip Trust in suspending Shri Ganeswar Rout for one day as per the order passed by the Additional Traffic Manager, Paradip Port Trust on 13-1-87, on grounds of misconduct, is neither legal nor justified and as such, it has got to be quashed.

7. Now coming to the next question as to the relief to which the second party-workman is entitled in view of the aforesaid findings, I hold that he is entitled to the normal relief of full wages alongwith all other service benefits for the day he was kept under suspension illegally as if he had not been suspended.

In the circumstance, the memorandum of settlement filed by the management is not accepted. The same be filed with the record. An award is passed accordingly.

Dictated & corrected by me.

S: K. MISRA, Presiding Officer

[No. L-38011/3/87-D.IV(A)/D.II(B)]

का. प्रा. 1191.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, नवम्बर पोर्ट ट्रस्ट, बम्बई के प्रबन्धन में सम्बद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में निम्नलिखित प्राधिकरण में 2 बम्बई के पंचपट की

प्रकाशित करती है, जो केन्द्रीय सरकार को 7-6-89 को प्राप्त हुआ था।

S.O. 1491.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, No. 2, Bombay as shown in the Annexure in the industrial dispute between the employers in relation to the management of Bombay Port Trust, Bombay and their workmen, which was received by the Central Government on the 7-6-89.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2 BOMBAY

Reference No. CGIT-2/5 of 1987

PARTIES :

Employers in relation to the management of Bombay Port Trust.

AND

Their Workmen

APPEARANCES :

For the Employers—Shri K. M. Vakil, Chief Law Officer & Advocate.

For the workmen—1. Shri S. K. Shetye, General Secretary, B.P.T. Employees' Union 2. Shri Jaiprakash Sewant, Secretary.

INDUSTRY : Ports and Dock STATE : Maharashtra, Bombay, dated the 28th April, 1989

AWARD

The Central Government by their Order No. L-31012/2/86-D.IV(A) dated 16-1-1987 have referred the following industrial dispute to this Tribunal for adjudication under Section 10(1)(d) of the Industrial Disputes Act :—

“Whether the action of the management of Bombay Port Trust, Bombay, in relation to its CME'S Department at Bombay in not changing the wrongly recorded date of birth of Shri Gaffar Ismail, a wireman, working in the CME's Department of Bombay Port Trust, is justified? If not, to what relief the workman concerned is entitled?”

2. The case of the workman, Shri Gaffar Ismail, a wireman serving in the Chief Mechanical Engineer's Department, as disclosed from the statement of claims (Ex. M-2) filed by the B.P.T. Employees' Union, in short is thus :

The said workman submitted his application dated 22-7-1980 to the Section Officer requesting for the change in the recorded date of birth in the register. The copies of the extract from the birth register and the School Leaving Certificate were also produced by him before that authority. The date of birth recorded in the B.P.T. records is 1-7-1926, and that recorded date of birth is wrong. In fact the correct date of birth is 7-6-1930. The Superintending Engineer (Mechal.), B.P.T. informed the said workman that his request for the change of the recorded date of birth was rejected by the Dy. Chairman of the B.P.T. The workman filed an Appeal to the Chairman of the B.P.T., but it also came to be rejected. The date of birth shown in the extract from the birth Registry is 7-6-1930, while the date of birth shown in the School Leaving Certificate is 15-7-1930, and as such the difference in the two dates is also of one month and eight days. It was stated before the authority of the B.P.T. that while the parents of the said employee sought admission in the School, they had given the date of birth only by their memory, and as such there was some discrepancy in the date of birth, and this discrepancy is not quite significant. As the appeal filed before the Chairman of the B.P.T. was rejected, the Union of the workman raised an industrial dispute before the Regional Labour Commissioner (C), Bombay. The Conciliation proceedings ended in failure. Hence, the Central Government made the reference as shown. The Union, therefore, prayed that

this Tribunal should declare the action of the management of the B.P.T. in not changing the wrongly recorded birth date, as unjust. The Union further prayed that this Tribunal should direct the B.P.T. management to change the recorded date of birth on the basis of extract from the birth Registry so as to appear as 7-6-1930, instead of 1-7-1926, and also to reinstate the workman in service and to grant the necessary consequential benefits of service.

3. The Secretary of the B.P.T. by his written statement (Ex. E/8) contested the claim of the Union, and in substance contended thus :—

The extract from the birth Registry submitted by the said workman was referred to the Ratnagiri Municipal Council for verification. The Chief Officer, Ratnagiri Municipal Council vide his letter dated 12-4-1982 informed the B.P.T. that the relevant pages of the register relating to the period from April 1930 to March 1931 were misplaced. Therefore, the verification of the said extract from the Birth Registry could not be carried out. While the date of birth appearing in the extract from the School Leaving Certificate is 15-7-30, the date of birth appearing in the extract from the Birth Registry is 7-6-1930. Apart from that, the following discrepancies were also noticed :

The name of child is not stated in the Birth Registry extract.

The name of father appearing in the Birth Registry extract is Shaikh Ismail Yakub Rajapurkar Semna.

The name of the student appearing in the extract of the School Leaving Certificate is Gaffar Shaikh Ismail Shemna. The name of the workman appearing in the records of B.P.T. is Gaffar Ismail.

The said discrepancies cannot be considered as insignificant, and therefore the Chairman had rightly rejected the appeal of the workman. The B.P.T. Management lastly contended that the action of the B.P.T. in not changing the recorded date of birth of the workman is just and proper, and requested that the claim of the Union be rejected.

4. On these pleadings, the Issues framed at Ex. 17 are:—

(1) Whether Shri Gaffar Ismail, Shaikh Ismail Yakub Rajapurkar Semna, and Gaffar Shaikh Ismail Shamna is one and the same person

(2) What is the correct birth date of the worker in question in this case?

(3) Whether the action of the management of Bombay Port Trust Bombay in relation to the CME's Department at Bombay in not changing the wrongly recorded date of birth of Shri Gaffar Ismail, a workman working in the CME's Department of Bombay Port Trust is justified?

(4) If not, to what relief the workman concerned is entitled?

(5) What Award?

5. My findings on the above said Issues are :—

(1) Gaffar Ismail and Gaffar S. K. Ismail Semna is one and the same person.

(2) 15-7-1930.

(3) No

(4) As per the Award below.

(5) As per order.

REASONS

ISSUES Nos. 1 to 3

6. The workman Shri Gaffar Ismail was working as a Wireman, in the Chief Mechanical Engineer's Department in Bombay Port Trust, Bombay. Admittedly the name of the workman entered in the records of the Bombay Port Trust is Gaffar Ismail. According to the workman his correct and full

name is Gaffar Shaikh Ismail Semna. The date of birth of that workman as entered in the B.P.T. record is 1-7-1926. His birth date as appearing in the birth registry maintained by the Ratnagiri Municipality is 7-6-1930, while his birth date appearing in the School Leaving Certificate is 15-7-1930. According to the workman his correct date of birth is 7-6-1930 as per the birth registry of the Ratnagiri Municipality. He had applied to the management of the B.P.T. for change of his recorded date of birth, i.e. 1-7-1926 to 7-6-1930, i.e. the date appearing in the Birth Registry of Ratnagiri Municipality. His application and the appeal filed in the matter were dismissed by the management of the Bombay Port Trust. Hence the necessary industrial dispute has been referred by the Central Government to this Tribunal.

7. The date of birth of the person whose father's name is Shri Shaikh Ismail Yakub Rajapurker Semna, appearing in the birth registry of Ratnagiri Municipality is 7-6-1930 (Ex. 28/W). When the workman had applied to the B.P.T. management for the change of his recorded date of birth, he had enclosed this extract from the Birth registry of the Ratnagiri Municipality along with his application. The B.P.T. management sent that extract to the Ratnagiri Municipality for verification. The Chief Officer of the Ratnagiri Municipality by his letter dated 12-4-1982 (Ex. E/9) informed the B.P.T. that pages 1 to 91 of the period 1-4-1930 to March 1931 are missing from the original birth registry. As such, the alleged birth date 7-6-30 could not be verified by the Ratnagiri Municipality from its original Birth Registry. Further, columns Nos. 7 and 8 of the extract of the Birth Registry, i.e. the date on which the information was given to the Municipality, and the name of the person who has given the information are blank. I therefore, find that the birth date mentioned as 7-6-1930 in the extract of the Birth Registry cannot be safely accepted and relied upon.

8. Even then, in my opinion, the date of birth mentioned as 15-7-1930 in the School Leaving Certificate of the person Shri Gaffar Shaikh Ismail Semna (Ex. 29/W) can be safely relied upon. According to the workman, his full and correct name is Shri Gaffar Shaikh Ismail Semna even though his name recorded in the record of the B.P.T. is Shri Gaffar Ismail. He filed the necessary affidavit (Ex. W/18) in support of his case before this Tribunal. He was cross-examination on behalf of the management. Shri S. K. Shetve, General Secretary of the B.P.T. Employees' Union filed his affidavit (Ex. W/20) in support of the case of the workman. According to him, he is knowing the workman Shri Gaffar Ismail alias Gaffar Shaikh Ismail Shemna since last more than 20 years, and that Shri Gaffar Ismail and Gaffar Sheikh Ismail Shemna is one and the same person. The Administrative Officer of the B.P.T. Shri Vishnu Shriram Karandikar filed his affidavit (Ex. E/22) in support of the contentions of the B.P.T. The respective witnesses were cross-examined by the respective other parties.

9. As noted above, the birth date of Shri Gaffar Shaikh Ismail Shemna as appearing in the School Leaving Certificate is 15-7-1930. It is seen from this certificate (Ex. W/29) that the said workman was admitted in the School in 1943. As such, the birth date as 15-7-1930 was entered in the School record of that School before M43. The workman in question filed his application for the change of birth date recorded in the B.P.T. in 1980, i.e., long after he left the school. As such, it cannot be said that the workman had then given a false birth date when he was admitted in the School at Ratnagiri.

10. Another important document supporting the date of birth as 15-7-1930 appearing in the School Leaving Certificate, is the Domicile Certificate (Ex. 30/W) obtained by the person Shri Gaffar Shaikh Ismail Shemna from the Addl. Chief Presidency Magistrate, Bombay in 1971 and the date of birth mentioned in that certificate is 15-7-1930. Therefore, while issuing the domicile certificate to the said person, the Additional Chief Presidency Magistrate also relied upon the birth date as appearing in the School Leaving Certificate. This domicile certificate was issued to the person in 1971, i.e., nine years before the workman in question filed the application for the change of his birth date recorded in the B.P.T. records. This circumstance is also material and important.

11. In October 1980 the workman Shri Gaffar Ismail had sworn an affidavit Ex. W/15 before the Deputy Registrar, Metropolitan Magistrates' Court, Extnade, Bombay. As per the statement made in this affidavit, even

though his name has been a recorded in the B.P.T. record as Shri Gaffar Ismail inadvertently, his full and correct name is Shri Gaffar Shaikh Ismail Shemna and be recorded in the B.P.T. record. Ex. 16/W is a copy of the extract of the Maharashtra Government Gazette dated 20-11-1980. It is seen from this extract that the name Shri Gaffar Ismail is changed as Shri Gaffar Shaikh Ismail Shemna, and the address of both the name is one and the same i.e., Mazgaon, Bombay-400010. Therefore, relying upon the extract of birth register, the domicile certificate, and the change of name as appearing in the Government Gazette, (Ex. W/16), I find that the date of birth of Shri Gaffar Ismail alias Shri Gaffar Sheikh Ismail Shemna is 15-7-1930 and Shri Gaffar Ismail and Shri Gaffar Shaikh Ismail Shemna is one and the same person. Issue No. 1 is found accordingly. The finding on Issue No. 2 is that the date of birth recorded in the School Leaving Certificate is the correct date of birth of the workman.

12. Therefore the action of the management of the B.P.T. in not changing the wrongly recorded date of birth of Shri Gaffar Ismail is not justified. His correct date of birth is 15-7-1930. Issue No. 3 is found accordingly.

ISSUE NO. 4

13. It seems that the said workman was made to retire on the basis of the wrongly recorded date of birth i.e. 1-7-1926. As noted above, he should have been continued in service on the basis of his correct date of birth i.e. 15-7-1930. He is entitled to the wages of the said period. However, for claiming the arrears of wages, he should file the necessary application under Section 33C(2) of the Industrial Disputes Act claiming the necessary arrears of wages. Therefore, on hearing other side on that point, the necessary order, as may be deemed fit in the matter, will be passed.

ISSUE NO. 6

14. Hence the following Award is passed.

AWARD

The action of the management of the Bombay Port Trust, Bombay in not changing the wrongly recorded date of birth of Shri Gaffar Ismail as 1-7-1926 is not justified and proper. The management of the B.P.T. is hereby directed to change the date of birth of the said workman Shri Gaffar Ismail alias Shri Gaffar Shaikh Ismail Shemna as 15-7-1930 in the record of the B.P.T.

The parties to bear their own costs of this reference.

24-4-1989.

P. D. APSHANKAR, Presiding Officer
[No. L-31012/2/86-D.IV(A)/D.III(B)]
V. K. SHARMA, Desk Officer

नई दिल्ली, 12 जून, 1989

का.पा. 1492.—औद्योगिक विवाद अधिनियम, 1947 (1947 का का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार व भारतीय खाद्य निगम के प्रबंधन के सम्बन्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चण्डीगढ़ के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-6-89 को प्राप्त हुआ था।

New Delhi, the 12th June, 1989

S.O. 1492.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Chandigarh as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Food Corporation of India and their workmen, which was received by the Central Government on the 2-6-89.

ANNEXURE

BEFORE SHRI M. S. NAGRA, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, CHANDIGARH

Case No. I. D. 93/85

PARTIES:

Employers in relation to the management of Food Corporation of India.

AND

Their workman Shri Santokh Singh,

APPEARANCES:

For the workman : Shri B. N. Sehgal.

For the management : Shri N. K. Zakhmi.

INDUSTRY : FCI.

STATE : Punjab.

AWARD

Dated, the 24th May, 1989

On the dispute raised by Santokh Singh against the Food Corporation of India (hereinafter referred to as FCI), Central Government had vide No. L-42012(2)/85-D.V dated 6-12-85 referred the following dispute to this Tribunal for decision:

"Whether the action of the management of Food Corporation of India in terminating the services of Shri Santokh Singh, Watchman w.e.f. 30-4-1977 is legal and justified? If not, to what relief the workman concerned is entitled to and from what date?"

2. Case of the Workman Santokh Singh, as set out in the statement of claim is that he was working as watchman with the FCI since 21-6-1972 and his services were illegally terminated on 29-4-1987 without any notice, charge sheet or inquiry and without payment of any notice pay or retrenchment compensation. It is pleaded further that other workman junior to the workman were retained in service after services of the workman had been terminated and the management thus violated the provisions of Section 25-G and Section 25-F of the I.D. Act 1947. He has prayed for re instatement with continuity of service with full back wages.

The management in its answer filed took plea that services of Santokh Singh workman who had joined FCI on 2-9-1971 were terminated vide office order No. A/1(605)71/1287 dated 4/10-2-78 w.e.f. 29-4-1977 on the ground of his absence from duty. It is mentioned that workman was given full opportunity to defend his case and the regd. notices sent to his permanent home address were received back undelivered from the postal authorities with report 'official has gone abroad and is not traceable'. Consequently the workman was charge sheeted and since the workman neither appeared nor filed any reply, his services were terminated w.e.f. 29-4-1977 i.e. the

date of his absence from duty.

3. Parties were afforded opportunity to lead evidence and they availed the same. Workman filed affidavit Ex. W1 reiterating allegations made in the statement of claim. During his cross-examination he made statement that after 27-4-1977 he had gone for duty many times but was not kept on duty. He admitted that he did not report the matter to any authority. In rebuttal the management filed affidavit Ex. M1 of Manmohan Singh, District Manager, FCI, Ludhiana who solemnly affirmed that Santokh Singh workman had absented from duty w.e.f. 29-4-1977 without any prior sanction of leave or intimation. A telegram copy of which is Ex. M3 was sent to him on 25-5-1977 directing him to resume his duty at once failing which ex parte action as deemed fit will be initiated against him. The workman did not join duty in spite of the said telegram and notice bearing No. 4/1(605) 71/506/77657 dated 25-7-1977 was sent to the workman through regd. post and the registered A.D. envelope containing notice copy of which is Ex. M5 was received back undelivered. He tendered copy Ex. M4 of the notice sent; copy Ex. M6 of the memorandum dated 11/13-10-1977 proposing to hold inquiry on the allegation of absence from duty as set out in the statement of articles of charges copy of which is Ex. M7. He also tendered copy Ex. M8 of memorandum

and copy Ex. M9 of the list of documents by which articles of charges were proposed to be sustained: copy Ex. M10 of the list of witnesses and photocopy Ex. M11 of the letter sent to Santokh Singh workman to at his permanent address. He also tendered copy Ex. M13 and M14 of the office letters received from the Asstt. Manager, Depot, FCI Hato where the workman was posted and Copy Ex. M12 of the final action passed against him terminating his services w.e.f. 29-4-1977 the date of his absence from duty.

Ld. Counsel for the management has argued that there is violation of principle of natural justice in as much as no charge sheet was given to the workman and no domestic inquiry was held against him. He has referred me to case of State of Punjab Vs. Ram Singh 1986(3) S.L.R. 379 wherein it has been held that adverse order without affording opportunity is a void order and there is no limitation for challenging the same as it can be challenged at any time. He has also cited case State of Punjab Vs. Ajit Singh 1988(1) SLR 96 which is another authority on this point. He has argued that regulation conferring arbitrary powers on the management are void and in this respect he has placed reliance on case of M.K. Aggarwal Vs. Gurgaon Gramin Bank 1988(1) CLR 379 wherein Supreme Court has been pleased to hold that Regulation 10(2)(a) of Gurgaon Gramin Bank, Which confers on Bank arbitrary and unguided power, is unconstitutional and consequently order of Bank of purported termination of petitioner's service is void. He contends that Rule 63 of FCI Staff Regulation in exercise of which disciplinary authority has terminated his services w.e.f. 4/10-2-1978 is void. The order of termination of his services is not sustainable in the eyes of law and as such petitioner is entitled to reinstatement with full back wages.

It is the admitted case of the management that no inquiry was held against the workman. The management contends that no regular inquiry was possible in as much as the workman did not associate with the inquiry as he had abandoned his job and left for foreign country. The management dispensed with the services of the workman without holding regular inquiry, in accordance with the provisions of Clause 63(2) of FCI Staff Regulation 1971 which envisages that where disciplinary authority is satisfied for reasons to be recorded in writing, that it is not reasonably practical to hold inquiry in the matter, the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit. In the case in hand, the evidence on the file shows that Santokh Singh had absented himself from duty w.e.f. 29-4-1977. The notice dated 25-5-77 copy of which is Ex. M4 was sent to him through Regd. A.D. post calling upon him to resume duty within seven days failing which disciplinary proceedings will be initiated against him. The said registered letter was received back from the postal authorities with the report that addressee has left for abroad, as evident from photo copy Ex. M5 of the said envelope. There after disciplinary proceedings were initiated against Santokh Singh vide Memorandum A/1605/71/858 dated 11/12-10-1977 (copy Ex. M6). In exercise of the powers conferred under Rule 63(2) of FCI Staff Regulation 1971 the services of the workman were terminated with effect from 29-4-1977 i.e. the date of his absence from duty. There is sufficient material on the file to show that it was not expedient to hold regular inquiry when the workman had himself abandoned the job. His statement that he had reported for duty many times, can not be accepted as he admits that he never reported the matter to any authority. After he absented from duty a registered notice as well as a telegram had been sent to him but to no response. It is a case of simple abandonment of job by workman and there has been no violation of principle of natural justice. The authorities were competent to dispense with the services of the workman without associating him in the inquiry and there was special reason for the management for having done so. Workman had absented from duty from 29-4-1977 and the present reference was made on 6-12-1985. Workman has failed to show if he had taken up the matter before the conciliation authority within the reasonable period from termination of his service. Management contends that the services of workman were terminated on 5/10-2-1978 but the workman had served demand notice in 1984. This Tribunal is satisfied that it is a pure case of speculative adventurism on the part of the workman who had abandoned the job on 29-4-1977. No doubt the final order dated 4/10-2-1978 passed by the management suffers

from infirmity in as much as services of workman have dispensed with retrospective effect 29-4-1977 but it is of no avail to the workman who had abandoned the job on 29-4-1977 and is not entitled to any relief for the period 29-4-1977 to 10-2-1978.

Reference is returned with the findings that action of the management of Food Corporation of India in terminating the services of Santokh Singh Watchman is legal and justified and the workman is not entitled to any relief what so ever.

Chandigarh : 24-5-89.

M. S. NAGRA, Presiding Officer
[No. L-42012/2/85-D.V/IR(C-11)]

नई दिल्ली, 15 जून, 1989

का. आ. 1493.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार व वेस्टर्न कोलफील्ड्स लिमि. की नाकोदा ओपन कास्ट प्रोजेक्ट के प्रबन्धन के सम्बन्ध नियोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, सं. 2 बम्बई के पंचपट को प्रेषित करती है, जो केन्द्रीय सरकार को 5-6-89 को प्राप्त हुआ था।

New Delhi, the 15th June, 1989

S.O. 1493.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. 2, Bombay as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Nakoda Open Cast Project of M/s. W.C. Ltd. and their workmen, which was received by the Central Government on the 5-6-89.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL NO. 2, BOMBAY

Reference No. GCIT-2/48 of 1988

PARTIES :

Employers in relation to the management of Nakoda
Open Cast Project of Western Coalfields Ltd.

AND

Their workmen.

APPEARANCES :

For the Employers—Shri P. S. Nair, Advocate

For the Workmen—No appearance.

INDUSTRY : Coal Mines STATE : Maharashtra
Bombay, dated the 16th May, 1989

AWARD

The Central Government by their Order No. L-22012/69/88-D.IVB dated 3-11-1988 have referred the following industrial dispute to this Tribunal for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947 :—

“Whether the action of the management of Nakoda Open Cast Project of M/s. W.C. Ltd. in dismissing Shri Agadhari Kistaiah, General Mazdoor w.e.f. 30-4-84 is legal and justified? If not, to what relief the workman concerned is entitled?”

2. Neither the Union nor the management filed any claim statement or written statement in the matter.

3. However, after the said reference was adjourned from time to time, both the parties arrived at an amicable settle-

ment and filed the Memo. of Settlement (Ex. 2). This Memo. has been signed by the workman himself and the Organising Secretary of his Union, and also by the officers on behalf of the management. The terms of settlement are thus :—

1. It is agreed that Sri Agadhari Kistaiah shall be taken back on employment as General Mazdoor in Cat-I within a month of receipt of the award of the CGIT No. 2, Bombay and he shall be posted at any of the units of Ghugus Sub Area.
2. It is agreed that Sri Agadhari Kistaiah shall not be entitled for any wages, what-so-ever for the period from 30-4-84 till he rejoins his duties and the above period is treated as dies-non on the basis of ‘no work, no pay’.
3. On re-employment Sri Agadhari Kistaiah shall be on probation for a period of one year from the date of his rejoining in his employment and during this period his conduct, performance etc. shall be closely watched and in case if his performance, conduct etc. are found satisfactory, during the period of his probation he shall be given continuity of services for limited purposes of gratuity.
4. Before joining, Shri Agadhari Kistaiah will give a written undertaking to the management duly countersigned by the representatives of the concerned Union that he will refrain from committing such misconduct in future.
5. This will be full and final settlement and there will not be any claim, whatsoever by the workman or the Union in this regard.
6. Both the parties have agreed to file this settlement jointly before the CGIT No. 2, Bombay on or before the next date of hearing of the case for Consent Award.”

4. I find that the said settlement is quite in the interests of both the parties. Hence I accept it. Therefore, the Award must be, and is drawn in terms of the settlement.
10-5-1989.

P. D. APSHANKAR, Presiding Officer
[No. L-22012(69)/88-D.IVB/IR(C-11)]

का. आ. 1494.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार व वेस्टर्न कोलफील्ड्स लि. की दुर्गापुर ओपन कास्ट कोलियरी के प्रबन्धन के सम्बन्ध नियोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण सं. 1, बम्बई के पंचपट को प्रेषित करती है, जो केन्द्रीय सरकार को 1-6-89 को प्राप्त हुआ था।

S.O. 1494.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. 1 Bombay, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Western Coalfields Limited Durgapur Open Cast Colliery and their workmen, which was received by the Central Government on the 1-6-89.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL NO. 1 AT BOMBAY

Reference No. CGIT-7 of 1989

PARTIES :

Employers in relation to the management of M/s.
Western Coalfields Limited, Durgapur Open Cast
Colliery

AND

Their workmen.

APPEARANCES :—

For the Management—Mr. P. E. Nair, Advocate.
For the Workmen—Mr. S. R. Pendre, General Secretary of Lal Bavata Koyala Kamgar Union.

INDUSTRY : Mining STATE : Maharashtra

Bombay, dated the 29th day of March, 1989

AWARD

The dispute in this reference relates to the dismissal from service of Shri Nathu B. Tiple, who was in the employment of M/s. Western Coalfields Limited, as a Mechanical Helper Grade-E at the Durgapur Open Cast Colliery.

2. The workman was dismissed from service for (i) Causing willful damage to work in progress or the property of the employer (ii) assaulting or threatening, abusing any superior or co-worker which constitute gross mis-conducts within the meaning of Company's Standing Orders 17(i)(i) and 17(i)(r). The allegations on which these charges were based are as follows :—

"That on 10-5-1983, at about 9.00 a.m. near the maintenance shed you forcibly stopped the workmen of Shri Shivshankar's gang, who were going to perform their duties in the Mine and also threatened them if they go on duty they will be beaten."

3. The charge-sheet was served on the workman on 10-5-1983, itself and the workman was placed under suspension with effect from the same day. The workman submitted his reply on 15-5-1983, to the charge-sheet-cum-show cause notice dated 10-5-1983. Shri Shiv Kumar Shrivastava, the Senior Personnel Officer, Durgapur Project, Sub-Area V, who was appointed as the enquiry officer carried out the enquiry during the period from 6-6-1983 to 14-7-1983 and submitted his report to the Sub Area Manager, Sub Area No. V, holding the workman guilty of both the charges levelled against him. The Sub Area Manager considered the report of the enquiry officer, the evidence recorded at the enquiry of the findings recorded by the enquiry officer and other relevant documents and accepted the report of the enquiry officer. He also held that the charges proved against the workman were very serious and that there were no extenuating circumstances in favour of the workman. He therefore dismissed the workman from service with effect from 1-9-1983.

4. The workman did not challenge the validity of the enquiry, obviously because, as can be seen from the record of the enquiry proceedings Exh. W-3, that the enquiry was properly conducted, the workman was given proper opportunity to defend himself and that principles of natural justice were duly contended in his statement of claim that the charges levelled against him were not proved and that the findings of the enquiry officer are perverse. He also contended that identical charges levelled against Shri R. Ganapathi, who was also allegedly concerned in the incident in question were duly established but the management adopted a discriminatory attitude and let off Shri Ganapathi with a warning while he was dismissed from service.

5. The employer contended in its statement of claim that the reference is bad in law being highly belated and was made by the Central Government mechanically without application of mind. The employer asserted that the workman fully participated in the departmental enquiry and that full and fair opportunity was given to him to defend himself. According to the employer, looking to the facts and circumstances of the case the management cannot place any confidence on the workman who indulges in violent activities and causes loss of production and indiscipline and hence the relief of reinstatement should not be given to him because reinstatement of such a workman will result in industrial indiscipline and unrest and it is neither in the interest of the workman not in the interest of the industry. The employer further contended that in any event Shri Tiple is not entitled to any back wages from the date of the dismissal till the order of reference because he was usefully engaged and was earning wages during the said period. The workman filed rejoinder to the statement of claim of the management and demonstrated by quoting the evidence led at the enquiry as to how the charges levelled against him were not proved

while they were proved against Shri Ganapathi. The workman also controverted other contentions raised by the employer maintaining inter-alia that as he was not proved to be guilty of any misconduct he is entitled to full back wages. In a sub-rejoinder filed on behalf of the management it was denied that the charges against the workman were not proved and any discriminatory attitude was adopted against the workman.

6. There is no substance in the contention that the reference is bad in law being belated because it was made nearly 5-1/2 years after the termination of service which was effected on 31st August, 1983. No limitation is prescribed for making a reference and the fact that the reference was made after 5-1/2 years does not make it bad in law. The contention that the Central Government acted without application of mind and mechanically in making the reference deserves to be stated only to be rejected.

7. Before this Tribunal the workman is represented by the General Secretary of the Lal Bavta Koyala Kamgar Union, Chandrapur, while initially the cause of the workman was espoused by the Lal Jhanda Coal Mines Mazdoor Union (CITU) and it was at the instance of the latter Union that the reference came to be made. An objection was therefore raised on behalf of the management to the representation of the workman by the General Secretary of the Lal Bavta Koyala Kamgar Union, Chandrapur. There is no substance in this objection because as can be seen from the letter Exh. W-8 that the workman has resigned his membership of the Lal Jhanda Coal mines Mazdoor Union (CITU) and from the letter of the authority filed under rule 36(1)(a) of the Industrial Disputes Act, 1947, it is clear that the workman is now a member of Lal Bavta Koyala Kamgar Union. After the enactment of section 2(A) it is not necessary that the dispute relating to the discharge, retrenchment or otherwise must be sponsored by a trade union or by substantial number of workmen. Moreover, the Union which espoused the cause of the workman has chosen to remain absent though duly served with notice of this reference and has thus ceased to represent the workman. It is also well settled that a cause espoused by one Union can be continued before the Tribunal by other Union of which the workman becomes a member after espousal of the cause by the first Union.

8. The contention of the workman, that the charges levelled against him were not proved and hence the findings of guilt recorded by the enquiry officer are perverse is well found and must be accepted. To substantiate the charges levelled against the workman the management led evidence of the controller Shri Shivshankar, and a labourer Shri Hira. Even though Shri Shivshankar, made a sweeping statement in his examination-in-chief that both Nathu Tiple and Shri R. Ganapathi, obstructed him and his labourers, told them that they should not go for work and threatened them that in case they went for work they would be beaten, he admitted in his cross-examination that the workman Shri Tiple only told him and his workers that they should not go for work and that the threat that they would be beaten if they went for work was given by Shri R. Ganapathi. Hira did not say anything about the alleged threat. He also did not say that Shri Tiple asked them not to go for work. According to him, Shri R. Ganapathi told them like that. He however, stated that Shri Shivshankar told him that Nathu Tiple and Shri Ganapathi had threatened him that in case they went for work they would be assaulted. He however categorically admitted in his cross-examination that Nathu Tiple told them that they can go for work and nobody would obstruct them. On the basis of this evidence no reasonable man would have come to the conclusion that Shri Tiple obstructed the contractor and his workmen and threatened them that they would be assaulted in case they went for work. As rightly contended by the workman there was absolutely no evidence to justify such a finding and that the charges levelled against him were not proved at all. The findings recorded by the enquiry officer were thus clearly perverse and the dismissal order based on such findings must be set aside.

9. It is also pertinent to note in this context that Shri Ganapathi, against whom the charges were proved on the basis of the evidence led by the management was let off with a light punishment of warning while the workman, Shri Tiple was subjected to the extreme punishment of dismissal. There is nothing on record to show that there was any extenuating circumstances in the case of Shri Ganapathi to justify a lighter punishment. As a matter of fact, it will be seen

from the order passed in Ganapathi's case that the disciplinary authority had observed that there were no extenuating circumstances. Nothing is placed on record to show that the service record of Shri Ganapathi was in any way better than that of Shri Tiple. In view of this the punishment of dismissal inflicted on Shri Tiple amounted to victimisation.

10. The contention that because of the violent activities Shri Tiple has lost the confidence of the management and that his reinstatement will result in industrial indiscipline and unrest is absolutely unfounded. The only violent activity which was attributed to Shri Tiple was the one on which the charges were based. As the said charges were not proved in view of lack of evidence about the alleged violent activities of Shri Tiple there was no justification for the management to lose confidence in Shri Tiple and there is no basis to conclude that his reinstatement in service would result in industrial unrest.

11. The management has not led any evidence to show that from the date of his dismissal till the date of present reference Shri Tiple was gainfully employed. The submission therefore that back wages should not be awarded has to be rejected.

12. In the result, therefore, it is held that the action of the management of Durgapur Open Cast Colliery of M/s. Western Coalfields in dismissing Shri Nathu B. Tiple was unjustified and the management of the Colliery is directed to reinstate the workman Shri Tiple in service forthwith and to pay him back wages from the date of dismissal till his actual reinstatement. Award accordingly.

M. S. JAMDAR, Presiding Officer
[No. L- 22012(68)/88 D IV (5)]
R. K. GUPTA, Desk Officer

नई दिल्ली, 13 जून, 1989

का. आ. 1495.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सूचनानुसार आरक्षित विवाद के प्रबंधन के संबंध में निम्नलिखित अधिनियम, नं. 1 बम्बई के पंचाद को प्रकाशित करती है, जो केन्द्रीय सरकार को प्राप्त हुआ था।

New Delhi, the 13th June, 1989

S.O. 1495.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. 1 Bombay as shown in the Annexure in the industrial dispute between the employers in relation to the Union Bank of India and their workmen, which was received by the Central Government.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL-
TRIBUNAL NO. 1 AT BOMBAY

Reference No. CGIT-32 of 1987

PARTIES :

Employer in relation to the management of Union Bank of India,

AND

Their workmen

APPEARANCES :

For the Management—Mr. R. S. Pai, Advocate.

For the Workmen—Mr. R. G. Thatte, Advocate.

INDUSTRY : Banking

STATE : Maharashtra

Bombay, the 30th day of March, 1988

AWARD

The Central Government in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, has referred the following dispute for adjudication to this Tribunal :

"Whether the dismissal of Shri C. V. Tripathi, Blind Telephone Operator, Mandvi Branch, Union Bank of India, Bombay with effect from 9-8-1984 is legal and justified on the basis of charge sheet framed by the management of Union Bank of India, Bombay ? If not, to what relief the workman is entitled ?"

2. The dispute in this reference relates to the dismissal of the second party Shri S. V. Tripathi from service of the Union Bank of India. Shri Tripathi who is a physically handicapped person being totally blind, was dismissed from service for various misconduct enumerated in the charge-sheet dated 10-10-1983, and the supplementary charge-sheet dated 3rd January, 1984.

3. In the first charge-sheet Shri C. V. Tripathi was charged with committing theft, cheating, doing acts prejudicial to the interest of the Bank, wilful disobedience of lawful and reasonable orders of the Bank and failure to show proper consideration, courtesy and attention towards officers, customers, and other employees of the Bank and unseemly or unsatisfactory behaviour while on duty. These charges were based on the following allegations about the acts of omission and commission attributed to Shri C. V. Tripathi during his tenure as Telephone Operator at the Khand Bazar Branch of the Bank :

"that on 30-12-1980 at about 7.30 p.m. he entered a, first class compartment of a suburban train travelling North, in an intoxicated state (which has been admitted by him vide his letter dated 1-1-81 and snatched a Ricoh watch of one Shri Himatlal Velji another commuter travelling on the same train between V. T. and Sandhurst Road Station. He thereafter, alighted and disappeared in the evening crowd at the railway station (he has admitted about the incident vide his letter dated 1-1-81).

that in November, 1981 Shri Tripathi developed friendship with one Rashmi P. Gorkasha, a telephone operator working at Canara Bank, Mandvi Branch who used to ring up the Bank's Khand Bazar Branch in an official capacity. He persuaded her to part with Rs. 2,500 after giving her to understand that he has influence with customs people and the Central Excise Department and that he could obtain gold for her. He also obtained from her an application to the customs Department to make it appear as genuine. The said gold was however never obtained nor was the money returned to Rashmi P. Gorkasha who had lodged a complaint to the Managing Director of the Bank.

that on 10th September, 1982 is a joint application Shri Tripathi rang up the Phydronic Police Station and lodged a complaint against certain staff members who were, he said, conspiring against him and were attempting to murder him.

that on 10th September, 1982 in a joint application 62 staff members of the Khand Bazar Branch brought to the notice of the Management that Shri Tripathi was a constant source of irritation and a trouble maker in the Branch and that they had earlier put up with his behaviour on humanitarian grounds as he was a disabled/handicapped person. But he was tarnishing the image of the Bank by borrowing money from the customers of the branch on various pretexts and not returning the same. He also used to abuse the staff/clients/customers in a foul and unparliamentary language whenever they would request for refund of their money.

that when Kum. Savita Chandra Ramani, a news reporter of the Times of India assisted Shri Tripathi in crossing the road at Marine lines, he won her confidence and mentioned to her that he could legally procure foreign goods confiscated by the customs. He gave her a false name and collected Rs. 1,500 towards the purchase of a camera over and above

the money she gave him to buy a cane. Shri Tripathi did not return the amount of Rs. 1,500 nor did he acquire the camera from the customs as promised by him.

that in the month of September, 1983 Shri Tripathi approached Shri N. N. Goradia, partner of M/s. PTC Engg. Works a valued client of our Khand Bazar Branch for some personal favour which was for unavoidable circumstances turned down. Thereafter Shri Tripathi used to behave very rudely with Shri Goradia whenever he rang up to speak to the Branch Manager/Accountant, Officer-in-Charge of various departments on official work. He subsequently even got to telling them that they were dialling the wrong number and would not connect them to anybody in the Branch. The PTC Engg. Works who have had long association with the Khand Bazar Branch over the years, were in a position to recognise and identify the voice of Shri Tripathi who used to receive the calls in his capacity as telephone operator. This attitude of Shri Tripathi caused great inconvenience to our respectable client of the Bank who had to personally come down to do business with the Bank.

that on 26th September, 1983 when Shri Gulu M. Vasandani, Branch Manager, attempted to serve the transfer memo, Shri Tripathi refused to accept the same and was promptly told to submit his refusal statement. When Shri Tripathi subsequently accepted the transfer memo from the Accountant on 27th September, 1983 he started abusing Shri G. M. Vasandani in front of 22 staff members in a vulgar and unparliamentary language and threatened to take revenge against him using fair or foul methods.

that although Shri Tripathi was transferred he was visiting the branch at any time of the day and created scenes in front of the customers. He also refused to handover the keys of the table drawers which was given to him in his capacity as telephone operator on grounds that certain personal belongings were in the drawer to be collected by him. He has thus put the replacement, Shri S. Nangrale and the branch to great inconvenience as the branch has to do with only one telephone operator."

4. Shri C. V. Tripathi submitted his detailed explanation on 17-10-1983 to the Assistant Superintendent, M.B. Zone, Central Office of the Bank. Shri J. A. Mudur, was appointed the enquiry officer to hold an enquiry into the charges levelled against Shri Tripathi, who by that time was transferred to Mandvi Branch of the Bank. The workman was allowed to appoint the General Secretary of the Union Bank Staff Union to act as his defence representative in the enquiry. At the outset, the defence representative raised objection to the appointment of Shri J. A. Mudur as the enquiry officer. The objection was over ruled by the enquiry officer. Thereupon the workman and his representative walked out of the enquiry which was therefore held *ex parte* against the workman. After the management evidence was over a copy of the proceedings of the enquiry was forwarded alongwith the memorandum dated 20-2-1984 to Shri Tripathi calling upon him to produce his evidence, if any, on 27-2-1984. Before that a supplementary charge-sheet dated 3-1-1984 was served on Shri Tripathi for the misconduct of making false accusations against superiors and other employees of the Bank for committing an act prejudicial to the interest of the Bank and unbecoming of an employee of the Bank and cheating. These charges were sequel to a complaint addressed by Shri Tripathi to the Chairman. The enquiry in respect of this charge-sheet was also posted on 27-2-1984. On that day Shri Tripathi handed over a letter to the enquiry officer, stating that he did not wish to add anything more to what was already stated by his representative on 22-2-1983 and that the *ex parte* proceedings will not be valid and binding on him. In view of this letter the enquiry officer closed the enquiry in respect of the first charge-sheet and proceeded to enquire into the charges levelled against Shri Tripathi by the supplementary charge-sheet. After the management case in respect of the supplementary charge-sheet was closed a copy of the proceedings was forwarded to Shri Tripathi vide memorandum dated 8-3-1984 calling upon him to produce his evidence. In reply to this memorandum, the workman wrote to the enquiry

officer a letter dated 4-4-1984, reiterating what he had stated in his earlier letter dated 27-2-1984. The enquiry officer therefore closed the enquiry in respect of the supplementary charge-sheet and recorded his finding on 9-6-1984. He called upon Shri Tripathi to attend personal hearing on 25-6-1984. As Shri Tripathi did not remain present on that date the personal hearing was adjourned to 26-6-1984. On that day, the enquiry officer Shri Mudur who was himself the disciplinary authority heard Shri Tripathi and the management representative and recorded his final findings on 31-7-1984, inflicting two separate punishments, one of dismissal and the other of stoppage of increment for six months. Being aggrieved this order the workman preferred an appeal to the appellate authority. The appeal was heard by the Deputy General Manager (Personnel) on 10-9-1984. The appellate authority passed a speaking order upholding the order of the disciplinary authority and rejected the appeal.

5. According to the workman, the enquiry officer Shri J. A. Mudur, who as an officer in the personnel department had opportunity to know his previous record, was prejudiced against him and as such could not be impartial and it was for this reason that he had objected to Shri Mudur's appointment as the enquiry officer. But as his legitimate request of changing the enquiry officer was wrongly rejected, he was justified in walking out of the enquiry. The *ex parte* enquiry, in these circumstances, was vitiated and the dismissal order passed on the basis of the *ex parte* enquiries cannot be sustained. He also contended that most of the charges were stale and most of the acts of omission and commission attributed to him and no nexus with his employment and hence the management could not have punished him for these acts. According to him, the charges levelled against him were false and were not proved by legal evidence. He also contended that the enquiry officer prepared false record of the enquiry without actually examining any of the witnesses, except two.

6. There was absolutely no justification for Shri Tripathi and the defence representative to walk out of the enquiry. The objection raised by Shri Tripathi to the appointment of Shri Mudur as the enquiry officer was unsustainable and was rightly rejected. The objection to Shri Mudur's competency to hold the enquiry was raised by the defence representative Shri L. M. Joshi, who was the General Secretary of the Union Bank's Staff Union. It was as follows:—

"I submit that the enquiry should be conducted by an impartial person unconnected with the entire incident and further follow-up. Then only ends of justice could be met. Here I point out that some of the incidents mentioned in the above referred memorandum pertain to one show cause memo MBZ : CO : 3880/82 dated 9-11-1982. This memo has been signed by you and after the reply of the charge-sheeted employee you have instructed the I.R. Cell for further action. Thus you cannot judge the issue in its proper perspective as you have already formed an opinion in the matter. The enquiry that would be held will just be an eye wash. I would, therefore, request you not to proceed further in this matter."

Thus it will be seen that the only ground on which bias and prejudice were attributed to Shri Mudur was that on earlier occasion he had issued show cause memo to the workman and after receipt of the workman's reply he had instructed the Industrial Relations Cell to take further action in the matter. Admittedly, he did not hold any enquiry in the charges mentioned in the said memo nor did he direct that any punishment should be inflicted on Shri Tripathi for the charges mentioned in the said memo. It will be seen from the endorsement made by Shri Mudur on the letter with which the Branch Manager of Khand Bazar Branch forwarded the explanation of Shri Tripathi, that Shri Mudur gave direction to obtain the comments, and recommendation of the Branch Manager. He did nothing else in the matter. It cannot therefore be said that he had formed his opinion in respect of the charges mentioned in the said memo dated 9-11-1982 and was thus incompetent to hold the enquiry in question. It is also difficult to accept the contention that being an officer in the Personnel Department of the Bank he was conversant with the service record of each and every employee. Moreover, being conversant with the service record of a workman does not necessarily mean that the officer knowing the record was prejudiced against the workman. The memo dated 9-11-1982, the explanation offered by the workman to

the said memo and the letter alongwith which the Branch Manager forwarded the explanation are produced at pages 26 to 28 of Exh. M-20. There was therefore no basis to attribute bias or prejudice to Shri Mudur and to object to his appointment as the enquiry officer. The objection was frivolous and was rightly rejected. There was therefore no justification for the workman and his representative to walk out of the first enquiry, and to refuse to attend the second, in view of the non co-operation adopted by Shri Tripathi the enquiry officer had no alternative but to proceed ex parte against him. It is pertinent to note in this context that after the evidence of the management witnesses was over, the enquiry officer forwarded a copy of the proceedings to the workman calling upon him to remain present and to lead defence evidence, if any. He gave such an opportunity to the workman in both the enquiries, the record of which was duly proved by Shri Mudur in his evidence before this Tribunal. The contention that Shri Mudur prepared false record without examining any witnesses, except two, is also frivolous on the face of the record. It will be seen from the record of the enquiries which is produced at Exh. M-17, M-18, M-19 and Exh. M-21 that all the witnesses had signed below their respective depositions, copies of which were forwarded to the workman. It is therefore futile on the part of the workman to find fault with the enquiries which were properly held. An opportunity was duly afforded to Shri Tripathi to defend himself at both the enquiries but he obstinately refused to avail of it.

7. There is however great force in the submission that most of the charges mentioned in the first charge sheet were stale and had absolutely no nexus with the employment. It will be seen from the charge sheet dated 10-10-1983, which is produced at Exh. M-1 that the first alleged incident took place on 30-12-1980, the second transaction took place in November 1981, the complaint was lodged by Shri Tripathi with the police on 9-9-1982, the joint complaint application given by the staff members was dated 10-9-1982, and the transaction in which Kum. Savita Chandiramani was concerned allegedly took place in September 1982, while charge sheet was issued on 10-10-1983,

8. As mentioned above, memo dated 9-11-1982 was served on Shri Tripathi by Shri Mudur calling upon him to show cause in respect of acts of omission and commission mentioned therein. It is pertinent to note that by that memo Shri Tripathi was called upon to show cause only in respect of the transaction with Rashmi Gorkasha and Shri Tripathi's complaint to the police. Even though the memo was issued on 9-11-1982, there is absolutely no reference in it to the incident dated 13-12-1980 the joint application given by the staff members on 10-9-82, and the transaction with Kum. Savita Chandiramani, which according to her took place in September 1982. It is pertinent to note that Miss Savita Chandiramani had lodged a complaint with the police on September 24, 1982 and because of the intervention of the Branch Manager of the Khand Bazar Branch she started receiving back her amount by monthly deductions from the salary of Shri Tripathi from October onwards. It is thus clear that the management of the Bank had ignored these incidents and rightly so as these incidents had absolutely no nexus with the employment of Shri Tripathi or business of the Bank. The charges which were not included in the memo dated 9-11-1982, appeared to have been raked up at a later stage to magnify the misdemeanour of the workman and to justify the extreme penalty of dismissal. As rightly contended the first five charges mentioned in the charge sheet dated 10th October, 1983 were stale, apart from the fact that three of them were already ignored by the Bank. It is also pertinent to note that in respect of the two charges mentioned in the memo dated 9-11-1982, no en-

quiry was held by the management of the Bank and that the matter was treated as closed after transferring the workmen from Khand Bazar Branch to Mandvi Branch as requested by the Branch Manager of the former Branch. The transfer order was also not issued immediately. The Manager of the Khand Bazar Branch who was asked by Shri Mudur to give his comments and recommendation requested transfer of Shri Tripathi by his letter dated 8-2-1983. The transfer however was actually effected in September 1983. It is not known whether the transfer was effected by way of punishment for the mis-conducts mentioned in the memo dated 9-11-1982. If it was not by way of punishment then the inference is that the mis-conducts mentioned in the said memo were ignored and thus condoned. If the transfer was effected by way of punishment then it would mean that the workman was already punished for both the mis-conducts. The management of the Bank therefore was not competent to take fresh action against the workman for the mis-conducts mentioned in the memo dated 9-11-1982 and those which were not included in the memo must be treated as ignored by the management. At any rate these charges (Serial No. 1 to 5 in the charge sheet dated 10-10-1983) had become stale.

9. In respect of the incident dated 30-12-1980, Shri Tripathi was charged for theft and in respect of the transactions with Rashmi Gorkasha and Savita Chindramani, he was charged for cheating the ladies. Both the charges were completely mis-conceived because they had absolutely no nexus with Tripathi employment with the Bank, nor were they any way connected with the affairs or business of the Bank. All these were completely out of the scope of the employment. Shri Tripathi is not alleged to have committed theft of any property of the Bank nor did he cheat any customer of the Bank or cheated anybody in respect of any transaction with which the Bank was concerned directly or indirectly or relating to the activities and business of the Bank. The fact that Rashmi Gorkasha complained to the Managing Director of the Bank and that Savita Chindramani could recover her amount by way of deductions from the salary of Shri Tripathi would not establish any nexus with Tripathi's employment or with the business of the Bank. Moreover the deductions could not have been made by the Bank without concurrence of Shri Tripathi.

10. The workman was not specifically charged for incurring debts either from his colleagues or from customers of the Bank. Except the reference to that effect made in the Joint complaint made by the staff members in September 1982, there is no mention of any loan transaction. Some evidence was sought to be led on behalf of the management before the enquiry officer about Tripathi's habit of borrowing money from other staff members. But no employee who lent any amount to Shri Tripathi was examined. Moreover, in the absence of a charge to that effect the enquiry officer should not have allowed such evidence to be led. Moreover, incurring debts and not repaying or refusing to repay them is not a mis-conduct for which the Bank could have instituted disciplinary proceedings

against Shri Tripathi. Only incurring debts to the extent considered by the management as excessive is mis-conduct within the meaning of clause (d) of paragraph 19.7 of the Bipartite Settlement and that too is a minor mis-conduct. Shri Tripathi was not charged for incurring debts to the extent considered by the management as excessive. There is nothing to show that the management had formed such an opinion. The fact that Shri Tripathi neglected to pay debts or refused to do so does not necessarily mean that he incurred debts which were excessive.

11. The charge of doing acts prejudicial to the interest of the Bank is based on the allegations that because Shri N. H. Goradia partner of M/s. FPC Engineering Works turned down a request for personal favour made by Shri Tripathi the latter started behaving rudely with Shri Goradia and did not connect him to any of the Officers of the Bank whom Shri Goradia wanted to contact on telephone falsely stating that Shri Goradia was dialing a wrong number. Shri N. H. Goradia, who is examined by the management to substantiate this charge proved the letter addressed by him to the Branch Manager of the Khand Bazar Branch complaining about the treatment given to him by the workman. Shri Goradia stated in his evidence before the enquiry officer that Shri Tripathi was knowing his voice and hence as soon as he phoned the Branch in order to talk to some of the officers Shri Tripathi used to disconnect the phone telling him that he had connected a wrong number. He also narrated how he actually found out that he was falsely informed by Shri Tripathi that he had connected a wrong number. Ordinarily, the evidence of Shri H. N. Goradia deserved to be accepted and the enquiry officer would have been justified in accepting his evidence to establish the charge levelled against Shri Tripathi, but for a palpably false story told by Shri Goradia which apart from the fact that it does not find place in the letter addressed by him to the Branch Manager on 19-9-1982 is prima facie un-believable. This is what he stated in his evidence before the enquiry officer. "After the day or two of the aforesaid conversation I telephoned the branch and as soon as I said hello, Shri Tripathi recognising my voice immediately said wrong number and disconnected the line. The office from where I telephoned is nearby our Khand Bazar Branch. I therefore sent one Mr. Nalin from my office to the Khand Bazar Branch to enquire from Tripathi as to why he is behaving in this manner. However Mr. Tripathi had gone for lunch. In the mean time I was holding on the telephone line and I had not disconnected the phone. Mr. R. K. Mohan Krishnan the other Telephone Operator of the Khand Bazar branch on being told of this incident immediately picked up the telephone line which I was still holding on and answered saying Union Bank here. I therefore understood that I had not dialled the wrong number. I asked Mr. Mohan where Mr. Tripathi had gone and he told me that Mr. Tripathi had gone for lunch." This story is prima facie false because if Tripathi recognising the voice of Shri Goradia, had dis-connected the line Shri

R. K. Mohan Krishnan could not have contracted Shri Goradia on the phone if as claimed by him he continued to hold the line. As long as Shri Goradia was holding the line the phone was engaged and none could have contracted him unless he himself dis-connected the telephone and placed down the receiver. Mr. R. K. Mohan Krishnan, would have received the engaged signal. The claim that Shri R. K. Mohan Krishnan could contact Shri Goradia on phone when the latter was holding the line is obviously false because technically it was not feasible. It is also pertinent to note that Shri Tripathi was not present when Shri R. K. Mohan Krishnan is alleged to have contacted Shri Goradia. He had gone for lunch. It is also too much to believe that as soon as Mr. Goradia said hello Tripathi could recognise his voice. Even assuming that Shri Goradia was a regular customer of the Bank and had occasion to often phone the officers he could not be the only person having such dealings with the Bank. It is therefore too much to expect that Shri Tripathi was in a position to correctly recognise the voice of Shri N. H. Goradia. Shri Goradia has also not stated that he was in a position to recognise the voice of Shri Tripathi and that he recognised that the person telling him that he had connected a wrong number was none else than Mr. Tripathi. Getting wrong numbers on telephone is not unusual and it is possible that Shri Goradia might have really connected a wrong number. It is pertinent to note that Shri Goradia had not mentioned in his letter about his direct confrontation with Shri Tripathi. The enquiry officer therefore should not have been so gullible as to accept such evidence even though it remained unchallenged. No reasonable man would have accepted such evidence unless he was determined to do so. The finding of the enquiry officer on this point therefore is clearly perverse.

12. The only basis of the charge of wilful disobedience of lawful and reasonable orders of the Bank is the refusal of Shri Tripathi to accept the transfer order when the Branch Manager tried to serve it on him on 26-9-1983. Much ado should not have been made about this alleged refusal because admittedly Shri Tripathi had accepted the order on the next day and complied with it by joining the Mandvi Branch to which he was transferred. It is alleged that when Shri Tripathi received the transfer order on 27-9-1983, he abused the Branch Manager in front of 22 staff members in a vulgar and unparliamentary manner and threatened to take revenge on him by using fair or foul methods. But the dismissal order is not passed on the charge of failing to show proper consideration, courtesy and attention towards officers, customers and other employees of the Bank and unseemly and unsatisfactory behaviour while on duty. It will be seen from the final order that for this charge and for the charge 'act/conduct unbecoming of a Bank employee', which is one of the charges included in the supplementary charge sheet the punishment inflicted is stoppage of increment for six months. This part of the order is not covered by the reference which is restricted to adjudication upon the punishment of dismissal. This applies to the allegation that after his transfer Shri Tripathi visited the Khand Bazar branch at any time of the day and created

scenes in front of the customers and also refused to hand-over the keys of the table drawers to his successor. He was not charged for riotous or disorderly behaviour.

13. The dismissal order is passed also on some of the charges levelled against Shri Tripathi by the supplementary charge sheet dated January 3rd 1984. By this memo Shri Tripathi was charged for making false accusations against superiors and other employees of the Bank, doing an act prejudicial to the interest of the Bank, and act/conduct unbecoming of a bank employee and cheating. These charges were based on the following allegations :—

"This has reference to a complaint letter addressed to the Chairman by Shri C. V. Tripathi dated 14th November, 1983. Shri Tripathi is informed that on an investigation in the matter it has been revealed that the complaint made by him against the Branch Manager, Shri Gulu Vasanthani, Shri Chitra, Incharge, Shri ohan, Telephone Operator & Shri Pai of Khand Bazar Branch is found to be false and baseless. Further, it has been revealed that the complaint has been made with an ulterior motive to malign the name of the above employees as well as the good name of the Bank. Shri Tripathi is informed that making false allegations against superiors, colleagues and making imputations intended to damage the good name of the Bank amounts to serious misconducts under the rules of the Bank. He is, therefore, charged with the following misconducts :

1. Making false accusations against superiors and other employees of the Bank.
2. Act prejudicial to the interest of the Bank.

Further it has been reported that Shri Tripathi attempted to dupe one Shri Mahesh Solanki by misrepresenting him that he is unemployed and that he would be getting the job in Bank of Baroda as a Telephone Operator provided he gets a 'slat' which is used by a blind Telephone Operators in performing the job of Telephone Operator, the cost of which is Rs. 125. He told Shri Mahesh Solanki that he did not have the money. He was also not carrying a stick. Shri Tripathi told Shri Solanki that he did not have the money to buy the stick. Shri Solanki parted with Rs. 25 for the purchase of his stick with Shri Tripathi.

Shri Tripathi is informed that the above acts of omission and commission on his part amounts to following misconducts and he is charged with the same.

1. Act prejudicial to the interest of the Bank.
2. Cheating.
3. Act/conduct unbecoming of a Bank employee."

A plain reading of this charge sheet will show that the alleged cheating of Shri Mahesh Solanki by Shri Tripathi had absolutely no nexus either with Shri Tripathi's employment with the Bank or with the

Business of the Bank nor it can be said that it prejudicially affected the interests of the Bank. This episode therefore could not have formed basis of disciplinary proceedings against the workman. The charge that Shri Tripathi made false accusations in his complaint letter dated 14-11-1983, addressed to the Chairman against some officers of the Khand Bazar branch is based on the report made by Shri A. S. Singhal, the Assistant Superintendent of Vigilance Department of the Bank who was asked to investigate into the aforesaid complaint dated 14-11-1983. The enquiry officer has held this charge proved only on the basis of the evidence of Shri Singhal who claimed that on investigation into the allegations made in the complaint he formed an opinion that there was no truth what-so-ever in the said allegations. Shri Singhal also tendered the report made by him and the statements recorded by him during his investigation. Admittedly, the enquiry officer himself did not enquire into the allegations made by Shri Tripathi in the complaint letter. The persons against whom allegations were made in the complaint were also not examined by the enquiry officer. It is also clear from the evidence of Shri Singhal that he did not make any enquiry with Shri Tripathi. As a matter of fact, Shri Singhal carried out the investigation behind the back of Shri Tripathi without giving him any opportunity to substantiate the allegations. The charge of making false accusations was thus not established by any legal evidence. The enquiry officer was not justified in basing his finding on Shri Singhal's opinion.

14. Looking to the nature of the charges levelled against the workman there appears to be substance in the contention of the workman that he was victimised. It appears that the Bank wanted to get rid of the workman for his extra curricular activities which caused some embarrassment to the management. This inference flows from the fact that the management ranked up incidents which were stale and un-connected with the employment of the workman and clubbed them with some minor incidents which could have been ignored. It is also pertinent to note that no enquiry was held during the period from 24-11-1983 to 5-1-1984 and it was recommenced after the second charge sheet was served on the workman which as mentioned above, was based on the report of Shri Singhal in respect of the complaint letter addressed by Shri Tripathi to the Chairman. An inference is irresistible that the complaint addressed by Shri Tripathi to the Chairman was made use of as an additional ground for supporting the punishment of dismissal. This shows that the issue was pre-determined and the management was out to collect as many sticks as possible to beat the workman with. The dismissal order therefore was completely unjustified. It is therefore set aside and the first party the Union Bank of India is directed to reinstate the workman Shri Tripathi in service with full back wages subject to the other punishment of stoppage of increment for six months which remains unaffected. Award accordingly.

M. S. JAMDAR, Presiding Officer
[No. L-12012/4/87-D.II(A)]

सई दिल्ली, 15 जून, 1989

स.स. 1496—सोडोगिक विवाद अधिनियम, 1947 (1947 का 11) की प्रांग 17 के अन्वयण में, केन्द्रीय सरकार न्यु डीक ऑफ इंडिया

के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अतुल्य में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नई दिल्ली के पंचपट को प्रकाशित करनी है, जो केन्द्रीय सरकार को प्राप्त हुआ था।

New Delhi, the 15th June, 1989

S.O. 1496.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure in the industrial dispute between the employers in relation to the New Bank of India and their workmen, which was received by the Central Government.

ANNEXURE

BEFORE SHRI G. S. KALRA; PRESIDING OFFICER; CENTRAL GOVT. INDUSTRIAL TRIBUNAL; NEW DELHI

I.D. NO.47/88

In the matter of dispute between:

Shri B. K. Gupta through General Secretary, New Bank of India Staff Association, C/O C-1, Shivaji Park, New Delhi.

Versus

The Management of New Bank of India, A.G.M. (Personnel), New Bank of India G-59, Marina Hotel Building, Connaught Circus, New Delhi.

APPEARANCES :

Shri Bharat Bhushan for the workman.

Shri Arjun Sikri for the Management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-12012/529/87-D.II (A) dated 4-4-1988 has referred the following industrial dispute to this Tribunal for adjudication :

"Whether the demand of the New Bank of India Staff Association alleging that the management of New Bank of India had fixed the maximum age limit at 30 years for the post of Officer's trainees and not considering the application of Sri B. K. Gupta, clerk-cum-godown-keeper in December, 1978, is justified ? If so to what relief is the workman entitled ?

2. There is not much dispute between the parties on the facts of this case. The workman Shri B. K. Gupta is employed as clerk-cum-godown keeper with the Management. The Management issued a circular letter dated 7-12-78 for recruitment of officer trainees from amongst the clerical staff in which one of the eligibility criterion was that the maximum age limit as on 1-12-78 was 30 years. The workman applied for the said post of officer trainee but he was not considered for the post as he was more than 30 years of age as on 1-12-78. The case of the workman is that this circular letter dated 7-12-78 was in violation of the promotion policy which was finalised on the basis of a settlement dated 12-12-1973. Accord-

ing to the workman the age limit for promotion to the officer cadre as per settled recruitment policy is 50 years and the age limit could not be reduced to 30 years by way of circular of the management. As per the age limit prescribed in the settled recruitment policy, the workman was fully eligible for promotion as officer trainee from the quota of internal recruitment as he was within the age limit of 50 years. The Management has justified its action but has not given any cogent reasons in support of its action and has rather tried to confound the issue by making irrelevant and confusing averments in its written statement. In the first instance the relevant clause relating to age limit in the settled promotion policy dated 12-12-73 reads as under :

"AGE LIMIT :

The age limit shall be 50 years as on the last date of the month preceding written test/interview which unless otherwise stipulated, shall be held in January and July every year. Provided, however, in respect of existing employees on the date of this settlement, the provisions of this Clause shall be effective from 1st January, 1975."

There cannot be any two opinions that the eligibility conditions as included in the settled recruitment policy could not have been unilaterally altered by the Management by way of a circular dated 7-12-78 whereby the age limit has been reduced to 30 years as on 1-12-1978. The Management has tried to show that by virtue of clause 14 of the policy dated 12-12-73 the Management can declare the required minimum qualification, experience etc. and it is in exercise of this power that they had fixed the age limit as 30 years. However, the Management has forgotten that the clause 14 ibid covers the categories of posts referred to in clause 13 which in turn pertains to the filling of the post by direct recruitment whereas the case of the workman is that his candidature was for internal recruitment and not for direct recruitment. Then the Management has tried to show without a specific pleading, that the circular dated 7-12-78 pertains to direct recruitment and not internal recruitment. This is a palpably false assertion because the circular dated 7-12-78 makes it explicitly clear that it is a recruitment of officer trainees from amongst the clerical staff. It has further been mentioned in this circular that the candidates possessing post graduation qualification should have one year's service and candidates possessing graduation qualification should have three years service in the bank as on 1-12-1978. This condition relating to service leaves no manner of doubt that it was a case of internal recruitment and not direct recruitment. For internal recruitment the age limit is 50 years as has been laid down in the settled policy dated 12-12-73 and it could not have been unilaterally reduced to 30 years by the Management by way of circular. Hence the action of the Management is wholly wrong and unjustified in not considering the workman for promotion as officer trainee on the ground that he was more than 30 years of age. No doubt promotion policy provides for a written test and interview for the eligible employees, yet much water has flown in the Ganges by this time and it will be a hardship for the

workman to be asked to go through a written test and interview at this stage while many persons junior to him have been promoted. It would also create an anomalous situation by giving the workman seniority over the other employees who have already been promoted after the written test and interview. The workman has made a statement that he is prepared to forego past financial benefits and also seniority but his pay may be fixed by including notional increments from the year 1979 onwards. This is an eminently fair and just arrangement. It is, therefore, directed that the workman shall be deemed to have been promoted to the rank of officer from the date of enforcement of this award and the pay of the workman may be fixed by giving him notional increments from the year 1979 onwards. This reference stands disposed of accordingly.

15th May, 1989.

G. S. KALRA, Presiding Officer
No. L-12012|529|87-D II(A)

नई दिल्ली, 16 जून, 1989

का. भा. 1497--औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार केनरा बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिکارण, बंगलौर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 7-6-89 को प्राप्त हुआ था।

New Delhi, the 16th June, 1989

S.O. 1497.--In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Bangalore as shown in the Annexure in the industrial dispute between the employers in relation to the Canara Bank and their workmen, which was received by the Central Government on the 7th June 1989.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT BANGALORE

Dated : 31st day of May, 1989

CENTRAL REFERENCE NO. 37|87
(Old Central Ref. No. 25|85)

I PARTY :

Shri B. P. Bhojappa. The General Manager,
Sanjeeva Nagar. Canara Bank,
Hebbal Post, Bangalore Circle Office,
BANGALORE. BANGALORE.

II PARTY :

APPEARANCES

For the I Party—Shri V. Gopala Gowda,

Advocate

For the II Party—Shri P. S. Sawkar,

Advocate

AWARD

By exercising its powers under Section 10(1)(d) of the Industrial Disputes Act, 1947, the Government of India, Ministry of Labour has made the present reference on the following point of dispute by its Order No. L-12012(31)|85-D.II(A) dated 10th November 1985. The point of reference is as follows :

2. The reference was originally made to the Industrial Tribunal constituted by the Government of Karnataka. Subsequently, it has been transferred to this Tribunal by a General Order No. L-11025|A|87-D.IV(B) dated 13th February 1987. It is at Sl. No. 38.

POINT OF REFERENCE

“Whether the management of Canara Bank, South Circle, Bangalore is justified in discharging the service of Shri B. P. Bhojappa, Ex-Clerk with effect from 29-4-83 ? If not, to what relief the workman is entitled to ?”

3. Then, the I party employee has filed his claim statement and inter alia, he has contended as follows :

He joined the II party as a clerk on 22-2-1979. He was discharging his duties honestly diligently. He was discharged from service with effect from 29-4-1983. A chargesheet dated 27-11-1981 was issued to him. It was vague. He submitted an explanation dated 7-12-1981, denying all the charges. He was not given the relevant documents. An Enquiry Officer was appointed. He did not hold the enquiry in accordance with law. The Enquiry Officer was biased. He has acted as a Prosecutor and a judge. His request to summon the witness was not granted. He proposed the punishment. He was prejudiced. The Deputy General Manager by his order dated 30-4-1983 passed an order of discharge. Having condoned his misconduct, the punishment of discharge imposed on him is extreme. It is disproportionate. Extenuating and mitigating circumstances are not taken into account. The action of the management is illegal. He was an active trade union leader. The management was hostile and in order to harass him, the order has been passed. Hence an award may be passed for reinstatement with all the benefits and full backwages.

4. The II party management has filed its counter statement and has inter alia, contended as follows :

He joined the II party on 21-3-1979. Around July 1981, he committed a serious act of misconduct. A domestic enquiry was held against him. He was given the assistance of a co-employee. He was given all the opportunity to defend himself. The disciplinary authority considered the findings and the recommendations of the Enquiry Officer and passed the order of discharge dated 30-4-1983. He had preferred an appeal. It was rejected on merits. If the enquiry is not held to be valid, an opportunity may be given to adduce evidence. The allegations made by him are not correct. The disciplinary action has been initiated by the Deputy General Manager and he was not competent to do so. The findings of the Enquiry Officer are based on evidence appearing on record. As per the Canara Bank Service Code, the Enquiry Officer had proposed the proper punishment. Hearing was given to him on the said point on 29-5-1982. The contention that having condoned his misconduct, the management could not have imposed the punishment of discharge is not correct. Discharge is also one of the punishments. The allegation that he was a trade union worker and he has been discharged for his such activities is denied. The act of misconduct committed by him has shaken the confidence reposed in him. It has lost confidence in him. The reference may be rejected.

5. In view of the said pleading, the following issues have been drawn-up.

- (1) Whether the II party conducted the Domestic Enquiry in accordance with principles of natural justice ?
- (2) Whether the punishment imposed against the I party workman is highly disproportionate and in contravention of Sec. 11-A of the I.D. Act ?
- (3) What Order ?

6. Issue No. 1 was taken up as a preliminary issue.

7. After receiving evidence from both the sides on the said issue and hearing the parties, a considered order was passed on Issue No. 1 on 8-9-1987. It was held that the enquiry conducted by the II party is not valid.

8. The II party was permitted to adduce evidence. The management has examined in all nine witnesses and got marked Exs. M-1 to M-56.

9. The I party employee has examined himself.

10. The parties have been heard.

11. My finding on the point of reference and issue No. 2 are as follows.

The management of Canara Bank, South Circle, Bangalore was justified in discharging Shri B. P.

Bhojappa, Clerk, with effect from 29-4-1983 and he is not entitled to any relief.

REASONS

12. Ex. M-1 is the chargesheet issued to him briefly, stated it shows as follows.

One Smt. H. B. Suvarna and Shri B. B. Chandrashekariah were holding a joint S. B. account No. 23431 at their Rajajinagar III Block branch. By cheque No. SCAM 379492 dated 3-7-81 for Rs. 1,000 payment was made on 4-7-81. Cheque No. SCAM 379491 dated 3-7-1981 was presented at the counter on 3-7-81 itself but it could not be passed as the signature on the cheque did not tally with the signature lodged with the bank and no body had turned up when the token number was called by the concerned supervisor. The said account holders have denied having drawn the said cheques and the said leaves were not from the cheque books issued to them. The Cheque Book Issue Register (henceforth called as CBI Register) indicated that cheque book with leaves bearing Nos. SCAM 379491 to 500 is purported to have been issued to one Shri B. C. Satish. The account holders have confirmed that the signatures in the CBI Register is not of their son Shri B. C. Satish. Admittedly, the said cheque book was issued by him and the relevant entry in the CBI Register is his. He has been thus charged that the management has reasons to believe that he had fraudulently caused the presentation of the cheque bearing No. SCAM 379491 on 3-7-1981 and has also fraudulently obtained the payment of the cheque 379492 of Rs. 1,000. He has been further charged that the management has reason to believe that he had obtained the cheque book containing leaves 379491 to 500 by misusing his official position and that he had fraudulently made the signature as Shri B. C. Satish in the CBI register and thus he was guilty of the gross misconduct under Chapter XI, Regulation 3(m) of the Canara Bank Service Code. Ex. M-2 is the explanation given by the employee. He has merely denied the charges. Ex. M-3 is the suspension order. Ex. M-4 is the order appointing the Enquiry Officer. Ex. M-5 is the enquiry proceedings. Ex. M-6 is the report of the Enquiry Officer. Ex. M-7 is the record relating to the personal hearing given to him. Ex. M-8 is the report.

13. As per the chargesheet Ex. M-1, the management is expected to prove, in the first instance that cheque book of leaves 379491 to 500 had been taken by the employee for himself, by fraudulently forging the signature of Shri B. C. Satish in the CBI Register. In order to establish that Shri B. C. Satish, the son of the account holders did not present the cheque issue slip nor did he receive the said cheque book, the management has examined the said Shri B. C. Satish himself. MW-7 Shri B. C. Satish has sworn in para 13 that on 3-7-1981, he had not gone to the said bank and on 2-7-1981, he did not receive any cheque book, as shown in Ex. M-21 (a) and that Ex. M-21 (b) is not his signature. In the cross-examination also, he has confirmed to the said fact. However, it has been elicited from him in para 19, in the cross-examination that he had gone to the said

bank on 2-7-81 and had encashed a cheque of Rs. 2,000. Ex. M-19, the ledger sheet shows that on 2-7-81 MW-1 Shri B. C. Satish had drawn Rs. 2,000 by cheque No 348. The learned counsel for the I party contended that the CBI book shows that the cheque book bearing Nos. 491 to 500 had been issued in the name of Smt. H. B. Suvarna, as the last entry, only because the concerned employee of the bank had the knowledge that on 2-7-81 MW-7 Shri B. C. Satish had visited the bank for the encashment of the said cheque of Rs. 2,000. In para 21 of his evidence, the employee Shri B. P. Bhojappa had admitted that on 2-7-1981 he had issued the seven cheque-books to seven parties, as shown on page 48 of Ex. M-21. He has further specifically admitted that he had issued the cheque book at Sl. No. 7 of page 48 of the CBI register, Ex. M-21. He further states that he issued the cheque-book to the person who had brought the requisition slip for the cheque book. He, however, adds that he was not knowing any person by name Shri B. C. Satish on that date. In para 22, he states that the person who gave him the slip has signed in the book, Ex. M-21 at Ex. M-21 (b) and then he gave the book to the person who had given him the requisition slip. MW-8 Smt. H. B. Suvarna is the Joint-account holder along with her husband. She has stated that her son Shri B. C. Satish used to go to the bank for encashment of her cheques. In para 6 of her evidence, she has sworn that on 2-7-81 she had not given any requisition slip to her son Shri Satish and did not tell him to bring any cheque book. In the cross-examination, in para 13, she has again affirmed the said fact and has denied the suggestion that on 2-7-81 she had given a requisition slip for the cheque book, while giving the admitted cheque Ex. M-40. It has been also suggested to her that her son Shri Satish had brought the cheque book, as shown at Ex. M-21 (a), when he had brought the cash of Rs. 2,000 of Ex. M-40. She has denied the suggestion. Ex. M-18 is the cheque No. 379491. MW-8 Smt. H. B. Suvarna has emphatically denied that the signatures on Ex. M-18 and another cheque, Ex. M-22 bearing No. 379492 are made by her. In para 23, she has further denied that under cheque, Ex. M-22 her son Shri Satish had taken Rs. 1,000 and then her husband and her son had together credited back Rs. 1,000 as per Ex. M-29. It has been further suggested to her that being repentant, they had sent the letters at Ex. M-30 and Ex. M-31. In para 24, it is also suggested to her that with the intention to see that no member of the staff is put to trouble and that they themselves also should not get exposed, they had written Exs. M-30 and M-31. MW-8 Smt. H. B. Suvarna has denied all these suggestions. Similar suggestions made to MW-7 Shri B. C. Satish in paragraphs 25, 33 to 38 have been specifically denied by him. On going through the evidence of MW-7 Shri B. C. Satish and MW-8 Smt. H. B. Suvarna, it would be as clear as day light that MW-8 Suvarna did not sign any cheque requisition slip and that MW-7 Shri B. C. Satish did not present the same on 2-7-81 and that the cheque book having leaves 379491 to 500 was not at all issued and given to Shri Satish and that Ex. M-18 and Ex. M-22 were not presented by them. The evidence of MW-8 in para 21 discloses that she used to keep the cheque book in a cupboard. The evidence of

MW-7 Satish and MW-8 Suvarna is mutually corroborative. I had the advantage of seeing both of them in the witness box. I do not find any reason as to why Satish, if the story of the I party employee is to be believed should have forged the signature of his mother on the cheque requisition slip and presented the same to the I party employee Bhojappa, or as to why Bhojappa should have issued the cheque book without entertaining any doubt about the forged signature or as to why after having encashed the cheque of Rs. 1,000, as per Ex. M-22 MW-7 Shri Satish and his father should have credited back the same and had written a letter, as per Exs. M-29 to M-31 to save the employees of the bank. The entire story does not stand to any scrutiny.

14. The evidence of MW-7 and MW-8 finds further corroboration from the evidence of MW-2 Shri P. R. Upadhyaya, the investigating officer. During the course of the investigation, he has recorded the evidence of the witness as per Ex. M-13 series and had given his report as per Ex. M-12. In para 12, he has sworn that MW-8 Suvarna and her husband Chandrashekariah had appeared before him and had informed him about the facts. In para 17, he adds that he did verify the bundle of slips but did not find any slip on the strength of which the cheque shown at Ex. M-21 (a) was issued. The bundle of cheques and slips has been produced before me at Exs. M-46(a) and M-46(b). The learned counsel for the I party did not point out that there is any such requisition slip alleged to have been given by MW-8 Smt. Suvarna on 2-7-81 or that on the strength of the same, MW-7 Shri Satish had obtained the cheque described at Ex. M-21 (a). The learned counsel for the I party strongly contended that MW-6 Sri T. S. Vasudev Murthy, the supervisor has initialled against the issue of the cheque book at Ex. M-21 (a) and it may be held that the cheque book had been, in fact, issued to MW-7 Shri Satish. MW-6 Shri Vasudev Murthy has emphatically sworn in para 4 that he has put his initial at Ex. M-21 (b) on the next day, since there was heavy work in the first week of the month and it was not possible for him to put his initials on the same day. He concedes that while putting his initials at Ex. M-21 (b), he did not verify whether the requisition slip was of the particular customer. He has explained that because of the pressure of work, it was not possible for him to verify and believing in the statement of the I party employee Bhojappa, he had put his initials at Ex. M-21 (b). There is overwhelming corroborative evidence on record to indicate that, at the worst MW-6 Shri Vasudev Murthy was not very diligent in his work in verifying the cheque requisition slip and then putting his initials at Ex. M-21 (b). The subsequent conduct of the other bank employee, besides the I party employee and also the subsequent conduct of the persons concerned, viz., MW-7 Satish and MW-8 Suvarna bear testimony to the fact that there was no cheque requisition slip signed and given by MW-8 Smt. Suvarna dated 2-7-81, that no such slip was given by Shri B. C. Satish and that he never obtained any cheque book containing leaves 379491 to 500.

15. MW-3 Shri Prabhu was the then Senior Manager of the Rajajinagar branch. His evidence discloses

that MW-8 Smt. Suvarna and her husband Chandra-shekariah had opened the S. B. Account 25431 and that they had given three cards bearing specimen signatures. The cards are produced at Exs. M-15 to M-17. As per the evidence of MW-3 Shri Prabhu, he had called the account holders Suvarna and her husband to the bank on 6-7-1981 and had enquired the matter with them. His evidence discloses that on 3-7-81, a cheque for Rs. 1,000 Ex. M-18 had been presented but the supervisor did not pass the same, for the reason that his signature on the cheque did not tally with the specimen signature of Smt. H. B. Suvarna and that when he had called a token holder, none had turned up and therefore the cheque was kept pending. The ledger sheet at Ex. M-19 shows that because the cheque was not passed, the entry made has been scored off, as per Ex. M-19 (a). The corresponding entry in the subsidiary sheet at Ex. M-20 (a) is also scored off. His evidence further discloses that on 3-7-81 Shri Bhojappa was working on the adjoining counter and that one Muniappa was working on the counter dealing with cheque number of Ex. M-18. In para 6, MW-3 Shri Prabhu swears that in the cheque Ex. M-18, it is the I party employee Bhojappa who has written the token number 236 at Ex. M-18 (a). In para 29 of his evidence, the I party employee Shri Bhojappa admits that the said joint S. B. Account of Smt. H. B. Suvarna and her husband is operated at counter No. 6 and that the ledger sheet, Ex. M-19 pertains to counter No. 6. He further admits that on 3rd and 4th of July 1981 MW-5 Muniappa was working on counter No. 6. It is admitted by him in para 30 that on 2-7-81 he had worked on counter No. 6 since MW-5 Muniappa was away and he had dealt with the ledger sheet Ex. M-19 on that day. In para 31, he stated that he has written the token No. 236 on the cheque Ex. M-18 and had sent it to the concerned clerk. He, however, adds that the concerned party had given him Ex. M-18 on that day, but he cannot say as to who that party was. He explains that Muniappa had gone for coffee at that time and had told him to look after the matters of his counter. Thus, it is an admitted fact that token No. 236 at Ex. M-18 (a) has been written by the I party employee Shri Bhojappa, though he was not working on counter No. 6 on 3-7-81. The evidence of MW-5 shows that though the cheque Ex. M-18 pertains to his counter No. 6, he has not written token No. 236 and swears that the supervisor has scored off the entries at Exs. M-19 (a) and M-20 (a), because the signature of the customer on the cheque did not tally with the specimen signature. In para 8, he categorically states that on 3-7-81, he had never requested the I party Shri B. P. Bhojappa to work on his counter and that the token No. 236 is written by Shri Bhojappa in Ex. M-18. In regard to cheque No. Ex. M-22 bearing No. 379492 MW-5 Muniappa has sworn that on 4-7-81 it was not given to him at his counter and he did not issue any token for the same. He has further testified to the effect that he has not made any entry regarding the cheque Ex. M-22 in the ledgersheet Ex. M-19 or the subsidiary sheet Ex. M-19.

16. MW-4 Shri Shivashankar was an employee working on the cash counter on 3-7-81. It is of extreme importance to note that he had gone to Rajajinagar branch only on 2-7-81. In para 2, he

swears that at that time, he was not knowing the I party employee, Shri Bhojappa and that he came to know about Bhojappa only after 10 or 15 days. With reference to Ex. M-22, he swears in para 7 that on 4-7-81, he has paid the amount of the cheque Ex. M-22. He concedes that on that day, he did not verify with MW-6 Vasudev Murthy, the supervisor whether he had verified the signature, cancelled it and had put the seal before it was sent to him for payment. He explains that because he had gone as a clerk only recently, he was not knowing as to who was the concerned clerk or the concerned supervisor, and that he proceeded on the general belief that because the cheque had the cancellation mark and the seal of verification, it had passed through the regular process and hence made the payment. It is stated by him in para 5 that if the payments are more, entries regarding payments are made in the shroff book after the business hours and if there is time, entries are made in the shroff book soon after the payments. His evidence in para 8 discloses that in the shroff book, Ex. M-38, the entries at Sl. Nos. 1 to 178 at Ex. M-38(a) are made by the I party employee Shri Bhojappa on 4-7-81 and he has made the rest of the entries from Sl. No. 179. In para 10, he has made the unambiguous statement that on 4-7-81, he had not requested Shri Bhojappa to make those entries at Ex. M-38 (a). In para 15, it has been suggested to MW-4 Shivashankar that in the shroff book the cashier alone should make the entries. The said suggestion is contradictory to the statement made by Shri Bhojappa himself in para 43 of his evidence. Therein, he has admitted that he has made the entries at Ex. M-38 (a) on 4-7-81. He, however, explains that on that day, the cashier Shivashankar had requested him for help and he helped him by making the said entries. The learned counsel for the II party contended that the party employee had gone inside the cabin of the cashier on that day only to see that the cheque, Ex. M-22 was however, made scarce, so that there can be no suspicion against him. From the evidence placed before me, it is difficult to arrive at such a conclusion and draw inferences to that effect. But the record discloses that only an employee of the bank was instrumental for the presentation of both the cheques Ex. M-18 and Ex. M-22, and the said employee was very much conscious that the cheque book of leaves 491 to 500 had not been issued to the genuine customer.

17. MW-3 Shri Prabhu, the Manager has then sworn in para 7 that the said token of Ex. M-18 was not returned at all and it was taken away by the person to whom it was given. The evidence of MW-3 then shown that on 6-7-1981 he had sent for the account holders and the account holders along with their son Shri B. C. Satish had responded to his request and on enquiry told him that the said cheque viz., Ex. M-18 and the signatures thereon were not made by them. He has further stated that they then told that the cheque book containing the leaves 379491 series was not of their cheque book and that the entire cheque book was not at all issued to them. Para 10 of his evidence shows that he made enquiries with Shri B. C. Satish also and pointed out the signature at Ex. M-21 (b) and Shri Satish told him that it was not his signature. Para 12 of his evidence discloses that then he checked up for the cheque issue slip, but it was not at all there. In

respect of Ex. M-22, cheque No. 379492, MW-3 Shri Prabhu has stated that on verification, he found that it was also not issued by the account holders. He had made enquiries with Shri Satish also and the latter had confirmed that the signature at Ex. M-22 (b) is not his.

18. The evidence of MW-6 Vasudev Murthy shows in para 7 that Ex. M-18 had been sent for being passed and in the first place he had rounded off the number and then he verified the signature on Ex. M-18 with the specimen signature, but he found that there was variation and therefore he did not pass the same and called for the token number, but there was no response. He further swears that he waited for sufficient time, none came and therefore he reported the matter to the Manager. His evidence finds support from the evidence of MW-3 Shri Prabhu the manager and also the entries in Ex. M-19 and Ex. M-20. The conduct of MW-6 Shri Vasudev Murthy, the supervisor in not passing one of the forged cheques Ex. M-18 is itself a proof that he is not the employee of the said branch who was aware and conscious of the fact that the cheque book of leaves 379491 to 500 was not issued to the genuine account holders. Since he is the concerned supervisor for counter No. 6, which dealt with S. B. account of Smt. H. B. Suvarna and her husband, the circumstances and the surrounding facts pointedly indicate the I party employed as the person.

19. The evidence of MW-6 Shri Vasudev Murthy further shows that as against his conduct in relation to Ex. M-18, he could not deal with another leaf of the same cheque book, Ex. M-22, because it never passed through him. In para 7 of his evidence, he has emphatically sworn that though Ex. M-22 pertains to his section and he was the person to pass it for payment, it never passed through him and Ex. M-22(c) is not his signature. It cannot be forgotten that the person concerned with the payment, MW-4 Shri P. Shivashankar had reported to duty to Rajajinagar branch only on 2-7-1981 and here is nothing strange, if he was not conversant with the signature of MW-6 Shri T. S. Vasudev Murthy, the supervisor. The person who had caused presentation of the cheque Ex. M-22 on 4-7-81 was thus very much conscious and aware of the fact that MW-4 Shri P. Shivashankar, the cash counter officer was not by then aware of the signature of MW-6 Vasudev Murthy. All these factors indicate that it was only an employee of the said branch and none else who had been responsible for presentation of the cheques Exs. M-18 and M-22. It is reiterated that MW-6 Vasudev Murthy was not that employee, since his conduct in regard to Ex. M-18 rules out that possibility.

20. In para 16 of his evidence, MW-3 Prabhu, the Manager swears that from Ex. M-22, he found that all the formalities for the cheque being passed had been complied with in Ex. M-22. In para 17, he swears that he then showed Ex. M-22 to Vasudev Murthy and the latter told him that he did not pass it. The immediate conduct of MW-6 Vasudev Murthy in reporting to the Manager that he did not pass Ex. M-22 further confirms the fact that his statement that he believed Bhojappa and put his initials as Ex. M-21(b) is worthy of acceptance. From Para 18, in the evi-

dence of MW-3, Shri Prabhu, it is obvious that at the time of tallying of the cash paid and the receipt of the cheques was made with reference to the entries made in the subsidiary the fraud relating to Ex. M-22 was detected on 27-3-81. The evidence of MW-3 shows in paras 19 and 20 that in regard to Ex. M-22 also he made enquiries with the account holders and Shri Satish and found that the cheque Ex. M-22 was not genuine, in the sense that it had not been issued by the account holders.

21. The immediate conduct of MW-3 Shri Prabhu is consistent with the fact that he is not the employee of the said branch who was involved in the fraud. His evidence in para 20 shows that soon after he found that the person who had taken the token 236 did not turn up, he pasted a writing in the cash counter as "Stop payment for token No. 236". The said slip is enclosed with the ledger sheet, Ex. M-19. The letter of MW-3 Shri Prabhu at Ex. M-14 dated 25-7-81 makes it clear that he reported the matter to the Assistant General Manager as to how the cheques had been presented and as to how one of the cheques was paid and in what manner he had made the enquiry in that connection. He has clearly stated that according to him fraud had been committed from within the branch and he has made a request that an investigation may be ordered for. As has been observed earlier, thereafter MW-2 Shri Upadhyaya has investigated the matter. Since the cheque, Ex. M-22 had all the required indications for being passed and since it appears from the evidence of MW-6 that he had not passed that cheque, the I party management had to explain as to how it was possible for the employee involved in the matter to see that the cheque had all the indications for being passed. In para 21 of his evidence MW-3 Prabhu has sworn that Signature Verification Seal, and round seal will be kept on the table of the supervisor and it will not be under lock during business hours. He further states that the ledger book and also the instruments are kept open during business hours and that other employee of the bank besides the supervisor will have access to the same. The only suggestion made to MW-3 Prabhu in para 6(i) is that if only himself and the supervisor MW-6 Vasudev Murthy had taken sufficient precaution, the endorsement of Ex. M-22 could have been prevented. There is no suggestion as such that there was any enmity between the I party employee and any other officer or employee of the said branch. On the contrary, there is neither any pleading nor any assertion by the I party employee that there was any ill will or enmity between himself and any other employee in that branch. In para 79 of his evidence, the employee Bhojappa states that at that time he had normal relations with clerk Muniyappa, Supervisor Shri Vasudev Murthy and that there was no grudge against him. Accepting for a while that there was negligence on the part of MW-3, Manager, Shri Prabhu or MW-6 supervisor Shri Vasudev Murthy, as contended by the I party, there is still then no explanation about the issue of the cheque, as shown in Ex. M-21 (a) to a third person besides to the account holders.

22. Crowning all the aforesaid evidence, there is the evidence of MW-9, the handwriting experts, Anil Kumar Mathur. The foundation for the expert evidence of MW-9 Anil Kumar is the bunch of docu-

ments at Exs. M-23 to M-27. In para 53 and para 54 of his evidence, the employee concedes that he has written Exs. M-23 to M-27. In para 22 of the evidence of MW-3 Shri Prabhu, there is a reference to the five documents which are marked at Ex. M-23 to M-27. He has stated that the first three documents bear his signatures, whereas the latter two contain his handwriting. Exs. M-23, M-24 and M-25 are his leave applications given at an undisputed point of time. However, it is an admitted fact that Exs. M-23, M-24 and M-25 bear his handwriting and signatures whereas M-26 and Ex. M-27 contain only his handwriting.

23. The evidence of MW-3 Shri Prabhu then show that on 18-8-1981, he had received by post pay-in-slip that Ex. M-29 for Rs. 1,000 dated 17-8-81. He further adds that Ex. M-30 is the cover under which the slip was received and Ex. M-31 is the covering letter for the said slip. Ex. M-31 is a typed document. It reads as follows :

To

The Manager
Canara Bank
Rajajinagar
Bangalore-10.

Sir,

Please put this Rs. 1,000 in S.B. A/c No. 23431—H.B. Suvarna, which was taken from me on 4-7-1981. Don't give trouble to your staff.

Yours faithfully,
(Satish)

The address of the Manager, Canara Bank on Ex. M-30 is also typewritten. The entries made in Ex. M-29 are also not in the handwriting of anybody but it is typewritten. As observed earlier, in para 8 of her evidence MW-8 Suvarna has stated that neither herself nor her son credited Rs. 1,000 under the pay-in-slip Ex. M-29 and that her son has not written any letter, as per Ex. M-31. In para 12 of his evidence MW-7 Satish swears that he has never written Ex. M-31 and did not send it in Ex. M-30 and he had never credited Rs. 1,000 to the bank as per the slip Ex. M-29. The learned counsel for the II party vehemently argued that it was only the I party employee who was interested in seeing that the management did not trouble him and therefore it was he who had credited Rs. 1,000 under the slip, Ex. M-29 on 17-8-81 and had further sent the slip to the Manager under the covering letter, Ex. M-31 in the envelope Ex. M-30. No motive has been suggested against MW-7 Shri B. C. Satish or MW-8 H.B. Suvarna as to why they should depose against the I party employee, if at all Satish had credited Rs. 1,000 under Ex. M-29. Thus, the documents at Exs. M-29, M-30 and M-31 establish another fact in the chain of events that only some employee of the said branch was responsible in remitting back Rs. 1,000 in Ex. M-29 and had further requested the management not to put any member of the staff in trouble in that connection.

24. The management has produced the admitted cheques of the said account holders. They are at Exs. M-33 to M-35. It is an admitted fact that the signatures at Exs. M-33 (a), M-34 (a) and M-35 (a) are of

Suvarna, and at Ex. M-33(b) and M-34(b) are of Satish. In para 25 of his evidence MW-3 Prabhu has sworn that when Satish denied that he had received any cheque book as shown in Ex. M-21(b), he sent Exs. M-21, M-33, M-34 and M-35 along with Exs. M-23 to M-27 to the handwriting expert and the expert gave his opinion as per Ex. M-36.

25. In Ex. M-36, MW-9 Anil Kumar has given his opinion and has also assigned reasons for the said opinion. Page 48 of the C.B.I. register of Ex. M-21 (b) has been taken as item No. 7 by MW-9 and the disputed signature "Satish B.C." is marked as 'X'. MW-9 Anil Kumar has marked the three cheques as A1, A2 and A3, as shown below :

Sl.	Cheque Number	Exhibit of this court	Marking as made by MW-9
(1)	181962	M-34	A1
(2)	177690	M-35	A2
(3)	181961	M-33	A3

MW-9 has marked the admitted leave applications and the handwriting sheets as shown below:

Sl. No.	Leave Applications, of	Exhibit of this Court	Marking as made by MW-9
(1)	9-4-81	M-25	B1
(2)	11-7-81	M-23	B2
(3)	19-5-80	M-24	B3
(4)	First admitted handwriting of Bhojappa	M-26	B4
(5)	Second admitted handwriting of Bhojappa	M-27	B5

26. In Ex. M-36, MW-9 Anil Kumar has given his opinion that the signature in question as "Satish B.C." marked as 'X' in Item No. 7 of the CBI Register is not the signature of B. C. Satish. He has further given his opinion that the said signature Satish B. C. marked as 'X' is in the handwriting of the I party employee Bhojappa. He has given as many as six reasons, in order to support his opinion.

27. The evidence of MW-9 Anil Kumar shows that since about 16 years the Firm is engaged in examination of questioned documents. It further appears in his evidence that formerly his father and himself were the partners of the firm and of late it has become the proprietary concern. In para 4 of his evidence, he reiterates that his firm had given the opinion, as per Ex. M-36 in 1981. It is concerned by him in para 1 that at that time photographs were not taken but examination was carried out by optical instruments. By I.A. No. 2 filed by the II party on 10-1-1989, an order was sought for for the return of the documents shown in Ex. M-36 for sending them again to the handwriting expert. By a considered order dated 11-1-1989, that application was allowed and the concerned documents were again sent to the handwriting expert. On 30-1-1989, MW-9 was examined in part and through him the documents at Exs. M-48 to M-52

were marked. He has been cross-examined on 13-2-89 and at that time the documents at Exs. M-53 to M-56 were marked. In para 8 of his evidence, MW-9 swears that in the sample handwritings, he has made some fresh markings such as B1(a), B2(a) etc. upto B 5(a). He has produced 15 photographic enlargements in three charts and they are marked as Ext. M-48, M-49 and M-50. MW-9 swears in para 9 of his evidence that he has examined the disputed signature at Ex. M-21 (b), after getting the photo enlargement as per M-48 (a). According to him, he has compared the said disputed signature at Ex. M-48 (a) with the admitted signatures of Satish appearing on the back side of the charts exs. M-33, M-34 and M-35. The said signatures of Satish have been marked as Ex. M-33 (b), M-34 (b) and M-35(b). The photographic enlargements of the same are at Ex. M-48 (b), (c) and (d). The admitted signatures of Satish on the back side of the cheques at Exs. M-33 (b), M-34 (b) and M-35 (b) show that Satish has signed as "B.C. Sateesh", whereas the disputed signature at Ex. M-21 (b) is written as "Satish B.C.". MW-9 has compared the admitted signatures of Satish at Exs. M-33 (b), M-34 (b) and M-35 (b) with the disputed signature at Ex. M-21 (b), as sworn to by him in para 9, and he has further compared the admitted handwriting and signatures of the I party employee Bhojappa appearing on documents such as Exs. M-23 to M-27 with the disputed signature at Ext. M-21 (b), as sworn to by him in para 10. For the purpose of convenience, he has taken another enlarged photograph of Ex. M-21 (b) and has pasted it in another chart and it is marked as Ex. M-49 (a). The enlargement of Ex. M-25, the admitted leave application is in two photographs marked as Exs. M-49 (b) and M-49 (c). The enlargement of the leave application at Ex. M-23 is in two parts marked as Ex. M-49 (d) and M-49(e). The enlargement of the admitted leave application at Ex. M-24 is in two parts at Exs. M-49 (f) and M-49 (g). The enlargement of photographs of the admitted writings of Bhojappa at Exs. M-26 and M-27 are at Exs. M-49 (h), M-50 (a), M-50 (b) and M-50 (c) respectively. In para 11 of his evidence, the expert MW-9 states that the disputed handwriting at Ex. M-21 (b) of which the enlargements are at Ex. M-48 (a) or Ex. M-49 (a) are not of B. C. Satish, as they appear at Exs. M-33 (b), M-34 (b) and M-35 (b) of which the enlargements are at Exs. M-48 (b), M-48(c) and M-48 (d). In para 12, he opines that the original of Ex. M-48 (a), i.e. M-21 (b) is in the handwriting of the same person who has written the two documents, Exs. M-25 and M-26 (the enlargements of which are at Exs. M-49 (b) to (h) and M-50 (a) to (c). The film of the negatives of all these exposures has been produced at Ex. M-52. His detailed report is to be found at Ex. M-51. In para 15, he states that taking into account the similarities as pointed out by him in his report, he is of the opinion that it is not possible that the handwriting at Ex. M-21(b) can be that of any other person but only of the person who has written Exs. M-23 to M-27. About the similarities and dissimilarities he has explained at paragraphs 18 and 19. Exs. M-53 is the letter of MW-9 of the II party bank seeking for the original documents for the purpose of enlargement. Ex. M-54 is a letter from MW-9 showing that the report had been sent to the bank. Regarding his com-

petency, MW-9 has produced the certificate dated 1-1-1973 issued by his father Parameswar Dayal. He has also produced the judgement of T & I.J. Petition No. 142 of 1983 filed in suit No. 26 of 1983 in the Hon'ble High Court of Judicature at Bombay to show that his opinion has been accepted.

28. The learned counsel for the I party referred to the cross-examination of the witness and argued at great length that he is not at all a handwriting expert and secondly his opinion is not scientific in as much as the signatures and handwritings of other employees of the bank or of some other persons were not examined by him vis-a-vis the handwriting and signature of the I party employee or that of B. C. Satish.

29. The learned counsel for the II party has placed reliance on the case of E. Venkataramiah Vs. Vanajakshamma (AIR 1956 Mysore page 8) to show that in the present case the evidence of MW-9 deserves to be accepted. The principle laid down in the authority is that the opinion of the handwriting expert is not conclusive but that it cannot be brushed aside as useless and that it is entitled to consideration and weight when it is corroborated by other evidence. The learned counsel for the II party further cited the case of Fakhruddin Vs. The State of Madhya Pradesh (AIR 1967 Supreme Court Page 1326). The rule enunciated is that a certain writing may be proved to be in the writing of particular individual by the evidence of a person familiar with the handwriting of that person or by the testimony of an expert in that field. It has been further laid down that comparison of the disputed writing by the court with the admitted writing is also one of the methods. It has been further stated that ultimately it is for the court to examine and to see whether it can accept the opinion of the expert, depending upon the facts and circumstances of the case.

30. The learned counsel for the I party, on the other hand cited the case of Abhaynand Mishra Vs. The State of Bihar (AIR 1959 Patna page 328). From the authority, it was pointed out the opinion of an expert engaged by a party suffers from the defect that it is given by a remunerated witness and that he knows before hand why he has been called and what the party calling him expects to be proved and that it is not improbable that he has an unconscious bias in favour of the party calling him. On that footing, it has been laid down that it is not safe to treat expert evidence as the basis for a conviction. There has been a specific observation that where a case against a person depends upon a comparison of the handwriting, the court is competent to use its own eyes for the purpose of deciding whether a certain handwriting placed before it is similar or not and that it should not blindly accept the expert's opinion without scrutiny.

31. The learned counsel for the I party further cited the case of Maria Piedade D'Souza and Ors. Vs. M. Narayanaswamy [1983(2) Kar. aLw J. page 135]. Stress was laid on the observation that an expert must have a view to find out if there are dissimilarities on points which could be considered as normal in the writing of the person. It has been observed that when experts differ, ultimately the Court has to form its own opinion on the basis of the entire evi-

dence, before it and that the Court would be competent to compare the signatures and the handwritings under S. 73 of the Evidence Act.

32. The two authorities cited for the II party, as shown above are binding on me. The authority of *Maria Piedade Vs. Narayanaswamy* cited for the I party also states that it is ultimately the Court that shall have to arrive at a conclusion about the issue in question, depending upon the facts and circumstances of the case.

33. I have compared the disputed signature at Ex. M-21 (b) shown as Satish B.C. and with the admitted signatures of Sateesh appearing at Exs. M-33 (b), M-34 (b) and M-35 (b). It is quite apparent that the manner, style and the letters used for writing the name as Satish are not at all of MW-7 Satish at Ex. M-21 (b). In my opinion, the evidence of MW-7 Satish and MW-8 Smt. H. B. Survarna proves beyond any shadow of doubt that the disputed signature at Ex. M-21 (b) is not all of MW-7 Satish. Their evidence has been substantially fortified by the evidence of MW-9 Anil Kumar, the expert and his reports at Exs. M-36 and M-51. In addition, the evidence of MW-9 Anil Kumar and his said reports establish the fact that the said signature Satish B.C. at Ex. M-21 (b) is in the handwriting of the I party employee Bhojappa. In para 16 of his evidence, MW-9 has stated about the dissimilarities also found in the writing of Ex. M-21 (b) on the one hand and in the writings of Exs. M-33 (b), M-34 (b) and M-35 (b) on the other. In my view, the evidence of MW-9 has fairly complied with the requirement as laid down in the case of *Maria Piedade D' Souza* also.

34. The evidence of MW-7 Satish has been attacked on several grounds. In para 26, it has been suggested to him that because he was then a student, he was making different signatures at that time. The witness has denied the suggestion. Though he has admitted that in his student days, he has not made the same kind of signatures. On going through the signatures at Exs. M-33 (b), M-34 (b) and M-35 (b) I find that at the relevant point of time, he had already adopted certain style in his signature. He has categorically denied the suggestion that he had presented the two cheques Exs. M-18 and M-22. In para 33, he has specifically refuted the suggestion that at Ex. M-18 (b) and M-22 (a), he has made the signatures. In para 34, he has emphatically denied that he has made the signature at Ex. M-21 (b) and he had received the cheque book. In para 36 of his evidence, he refutes that he had drawn Rs. 1,000 under Ex. M-22 and that subsequently he realised the mistake and therefore he credited the said amount, as per Ex. M-29. In para 37, it has been suggested to him that he had posted the letter, Ex. M-31 in the cover Ex. M-30 and that in consultation with his parents, he has credited the said amount. In para 38 of his evidence, it has been suggested that Satish and his father had together credited Rs. 1,000/- and had sent Exs. M-29, M-30 and M-31 with reference to the admitted cheque Ex. M-40, it was pointed out to me that at Ex. M-40 (c) he has signed as Satish B.C., whereas he has signed at Exs. M-33 (b), M-34 (b) and M-35 (b) as B. C. Satish and thus, it was argued that his evidence does not prove the alleged misconduct against the I

party employee. The signature at Ex. M-40 (c) substantiates the contention of the II party, since on a bare look one can easily make out that the handwriting as "Sateesh B. C." is similar to the signature of "B. C. Sateesh" appearing at Exs. 33 (b), 34 (b) and 35 (b). The contentions raised by the I party in that connection are of no avail.

35. The ledger sheet of the S. B. account of Smt. H. B. Survarna 23431 at Ex. M-41 shows that the I party employee had on several occasions worked on counter No. 6 and had several occasions to have come across B. C. Satish. In para 48 of his evidence, WW-1 Bhojappa, the employee states that the portion marked as Ex. M-41 (a) and M-41 (b) might be in his handwriting. They are of March 1980 and May 1980. It is important to note that on both these occasions of Ex. M-41 (a) and M-41 (b), the employee himself has written the name of MW-7 as Sateesh and not as Satish. Ex. M-41 further proves that the employee Bhojappa cannot be believed in his statement that he had not come across MW-7 Satish on any day prior to 2-7-1981. The employee has been confronted with the requisition slip, Ex. M-42 dated 6-6-81 and in para 59 of his evidence, he states that it might be that a party had given the requisition slip, Ex. M-42 for obtaining the new cheque book. Ex. M-42 shows that the said account holders was issued with the cheque book bearing leaves 375341 to 350. In para 60 of his evidence, WW-1, the employee admits that as could be found at Ex. M-19 (c) on 27-6-81 cheque bearing No. 375347 had been encashed for Rs. 500 and the aforesaid cheque book had still three cheque leaves. In para 61 of his evidence, WW-1 the employee further swears that as per the entry at Ex. M-21 (c) at page 51 of the 6. B.I. register a new cheque book having leaves 381101 to 110 was issued and Ex. M-43 is the requisition slip for the same. In para 62, he further concedes that except for Ex. M-19 (a), there is absolutely no reference to any of the cheque leaves of the cheque book purported to have been issued to the account holder on 2-7-81 having leaves 379491 to 500. Thus, there is supporting evidence from these admissions made by the I party employee that except for the cheque Ex. M-22 paid by MW-4 Shivashankar on 4-7-81 soon after he had joined that branch, there was no other payment made from any of the leaves of the cheque book issued under Ex. M-21 (b).

36. The evidence as analysed and marshalled establishes for the management that on 2-7-1981, the I party employee had issued cheque book of leaves No. 379491 to 500 in the name of H. B. Survarna for himself forging the signature as Satish B. C. and that he did not give the said cheque book to B. C. Satish and that he had taken it for himself.

37. The evidence on the said point is conclusive and there is no scope for any doubt.

38. The management has further charged the I party employee that he had caused presentation of the cheque bearing No. SCAM 379491 dated 3-7-81 and on that point there is the evidence of MW-5 Muniyappa. The procedure as to how a cheque is encashed, as narrated by MW-5 Muniyappa is not disputed. The evidence of MW-5 Muniyappa in paras 7 to 10 describes as to how he had made the entry in

the ledger sheet at Ex. M-19 (a) and in the subsidiary at Ex. M-20 (a) but that the supervisor found that the signature on the cheque did not tally with the specimen signature and therefore the person who presented the cheque could not encash the same. It has been specifically sworn to by him that he did not issue the token. Discussion has been already made as to how the cheque contains the number of the token in the handwriting of the I party employee and as to how the person who had received the token did not respond when he was called by the clerk. The said evidence of MW-4 Shivshankar is corroborated by the evidence of MW-6 Vasudev Murthy. His evidence in para 7 clearly indicates that the I party employee was responsible for the presentation of the cheque Ex. M-18 but that when the token holder was called, he did not respond, since the supervisor had found that the signature on the cheque did not appear to be the genuine signature.

39. The learned counsel for the I party placed reliance on the case of *Narayan Mahapatra Vs. General Manager, S.E. Railway* (1969 LAB. I.C. Page 896). The authority is on the point that technical rules of criminal trial did not apply yet mere suspicion should not take place of proof. Since there is foolproof evidence that the I party employee had himself received the cheque book shown at Ex. M-21 (b) and since the concerned clerk MW-5 Muniyappa had not issued the token for the cheque and since the token holder did not turn up when it was found that the signature on the cheque did not tally with the specimen signature, I find that it is not a case of mere suspicion, but a case of sufficient proof to arrive at a conclusion that it was the I party employee who had caused the said cheque to be presented.

40. The learned counsel for the I party further cited the case of *Gian Mahtani and another Vs. The State of Maharashtra and Another* (1971 (2) Supreme Court Cases page 611) and contended that the chain of circumstances should be complete before a conviction can be sustained and the same rule applies for the present case also. In a criminal case, if the case is based on circumstantial evidence, the proof required should be of such a nature that the circumstances should lead to a conclusion, which is incompatible with the innocence of the accused. In an enquiry of the present nature, the proof required cannot be of the nature that it should be beyond all reasonable doubt. It is sufficient, if there is preponderance of evidence leading any reasonable man to arrive at a conclusion that the employee is guilty. The evidence on record indicates that the employee who was responsible for the issue of the cheque book as shown at Ex. M-21 (b) was instrumental for the presentation of the cheque No. 379491 dated 3-7-81 and that the evidence on that point is quite convincing.

40. The management has further chargesheeted that he had fraudulently obtained payment of cheque 379-92 of Rs. 1,000 dated 3-7-81. The finding that he had received the cheque book for himself by forging the signature of Satish B.C. at Ex. M-21 (b) is the basis for the subsequent findings also. The document at Exs. M-29, M-30 and M-31 do show that it was only the employee of the bank who wanted

that the management should not trouble any employee of the bank for the encashment of the cheque No. 492 of Rs. 1,000. Discussion has been already made as to how the evidence of MW-3 Prabhu, MW-4 Shri P. Shivshankar, MW-5 Muniyappa and MW-6 Vasudev Murthy points only to the workman in that connection. The evidence of MW-7 Satish, MW-8 H.B. Suvarna has established the fact that they did not receive the cheque book nor did they present the cheque 492 nor did they receive a sum of Rs. 1,000 nor did they credit back Rs. 1,000 to the bank nor did they write Exs. M-29, M-30 and M-31. The evidence on record is thus incompatible with the innocence of the I party employee and that it indicates that only the I party employee was instrumental and the beneficiary of the encashment of the cheque 379492 of Rs. 1,000. The third part of the charge has also been thus established.

41. The learned counsel for the I party referred to the case of *Sant Raj and another Vs. O. P. Singla and Another* (1985 2 Supreme Court Cases page 349) and argued that where the termination of the services of workman is illegal, the court has the discretion to grant the relief. The authority is of no assistance, since it has been held that the management has established the guilt against the employee.

42. Reference was made to the case of management of *Royal Laboratories, Hyderabad Vs. Labour Court and Another* (1988 1 L.L.J. Page 201) and it was argued that the management cannot remove an employee merely on the plea that it has lost confidence, unless there is a proof that the action of the management is being upheld that it has lost confidence in him. It has been held that the misconduct of the workman has been established to the hilt and thus it was justified in passing the impugned order.

43. The learned counsel for the I party has referred to the following authorities, in order to support his contention that the I party employee is entitled not only to reinstatement but also to back wages and consequential benefits :

- (1) *Shankar Dass Vs. Union of India & Another* (1985) 2 Supreme Court Cases page 358).
- (2) *Scooter India Limited, Lucknow, Vs. Labour Court, Lucknow* (AIR 1989 Supreme Court page 149).
- (3) *Rama Kant Misra Vs. The State of U.P. and others* (1982 1 L.L.J. page 472).
- (4) *Hindustan Tin Works Limited Vs. Its Employees* (1978 11 L.L.J. Page 474).

It suffices to observe that none of the aforesaid authorities are of any assistance to the I party employee, since it has been held that the management had proved the misconduct, as shown in the chargesheet, Ex. M-1.

42. Taking into account the fact that he has indulged in serious acts of misconduct such as issue of cheque book for himself by forging the signature of the son of the account holders and that he has successfully managed to encash one of the leaves of the cheque book, I am of the view that it is not a fit case to invoke the provisions of Section 11-A of the I.D. Act.

43. During the course of his arguments, the learned counsel for the I party contended that MW-6 Vasudev Murthy has initialled the issue of the cheque book at Ex. M-21 (b) that the legality of the same should be presumed and that it may be held that the cheque book had been issued to the proper person. Evidence in that connection has been analysed and merely because MW-6 Vasudev Murthy had initialled, believing the I party employee, it cannot be said that the I party is not guilty. The contention that no action has been taken against Vasudev Murthy holds no water, since it has no nexus to find out whether the I party is guilty of the misconduct or not.

44. It was contended before me that there was no rule that before all the leaves of a cheque book are exhausted, an account holder cannot take another cheque book and thus it may be held that Satish had himself taken the said cheque book. The evidence has been discussed threadbare and on appreciation of evidence, it is found that the I party Bhojappa had himself issued the cheque book for himself.

45. The learned counsel for the I party contended that some outsider must have failed in his first attempt while encashing Ex. M-18 and therefore he might have attempted again and must have encashed Ex. M-22. The fact that without the knowledge of the MW-6 Vasudev Murthy the cheque Ex. M-22 had on it all the markings for being encashed, indicates that it was only the employee of the bank who was responsible for the presentation and encashment of Ex. M-22. The submission holds no water.

46. The learned counsel for the I party finally submitted that even otherwise, this is a fit case in which provisions of Section 11-A may be invoked. It was submitted that the management has based its order only on suspicion and therefore the workman may be reinstated. It was also submitted that the court may take into account that he is an ex-serviceman and that he is already overaged and that he cannot find any other employment and that the approach of the court should be reformative. In the light of my finding that the employee had taken the cheque book and that he had succeeded in encashing one of the cheques, I find that the same is a sufficient ground for repelling all the said submissions. I am of the view that the punishment imposed on him is quite reasonable.

47. The learned counsel for the I party argued that having condoned his misconduct, the management could not have imposed the punishment of discharge. The II party has contended in the counter statement itself that discharge is one of the punishments and that the punishment of discharge does not mean that the misconduct of the workman has been ignored by the management. The circumstances under which the impugned order has been passed, as per Ex. M-9 shows that he was found guilty and the punishment of discharge was recommended and accordingly the disciplinary authority imposed the punishment of discharge. Ex. M-10 is the appeal filed by him and Ex. M-11 order passed in appeal. The order in appeal at Ex. M-11 also indicates that the punishment of discharge has been imposed as a consequence of finding him guilty in the domestic enquiry. As observed earlier, the domestic enquiry has been set aside, but it has been

found on the evidence adduced by the management that he has been guilty of the charges as levelled against him in Ex. M-1. I do not find any forces in the contention that the management had condoned his misconduct and therefore it was not permissible to impose the punishment of discharge. To reiterate, the punishment of discharge is imposed for the misconduct, as shown in Ex. M-1 and therefore there was no condonation of the misconduct as such.

48. Looking from any angle, I find that the action taken by the management is justified.

49. In the result, an award is passed to the effect that the management of the Canara Bank, South Circle, Bangalore was justified in discharging from service Shri B. P. Bhojappa, Ex-Clerk with effect from 29-4-83 and that he is not entitled to any relief.

(Dictated to the Stenographer, taken down by her, got typed and corrected by me.)

B. N. LALGE, Presiding Officer.
[No. L-12012/31/85-D.II(A)]
N. K. VERMA, Desk Officer.

आदेश

नई दिल्ली, 15 जून, 1989

का. आ. 1498—भारत सरकार के तकनीकी श्रम, रोजगार और पुनर्वास मंत्रालय की तारीख 22 सितम्बर, 1967 की अधिसूचना संख्या का.आ. 3453 द्वारा गठित श्रम न्यायालय के मुख्यालय, नागपुर के पीठासीन अधिकारी का पद रिक्त हुआ है;

अतः, अब, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 8 के उपबंधों के अनुसरण में, केन्द्रीय सरकार श्री एम. देशपांडे को उक्त श्रम न्यायालय के पीठासीन अधिकारी के रूप में नियुक्त करती है।

[सं. एम.-11020/1/81-डी-1(ए)]

नन्द लाल, अवर सचिव

ORDER

New Delhi, the 15th June, 1989

S.O. 1498.—Whereas a vacancy has occurred in the office of the Presiding Officer of the Labour Court with headquarters at Nagpur constituted by the Notification of the Government of India in the then Ministry of Labour, Employment and Rehabilitation No S.O. 3453 dated the 22nd September, 1967;

Now, therefore, in pursuance of the provisions of Section 8 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby appoints Shri M. S. Deshpande as the Presiding Officer of the Labour Court constituted as aforesaid.

[No. S-11020/1/81-D.I(A)]

NAND LAL, Under Secy.

नई दिल्ली, 15 जून, 1989

का. आ. 1498—चूना पत्थर और डोलोमाइट खान श्रमिक कल्याण निधि नियम, 1973 के नियम 3 के उप नियम (2) के माध्यम से चूना पत्थर और डोलोमाइट खान श्रमिक कल्याण निधि अधिनियम, 1972 (1972 का 62) की धारा 6 द्वारा प्रदत्त शक्तियों का प्रयोग

करते हुए, केन्द्रीय सरकार महाराष्ट्र राज्य के लिए एक सलाहकार समिति गठित करती है जिसमें निम्नलिखित सदस्य होंगे, अर्थात् :—

- | | |
|--------------------------------------------------------------------------------------------------------------------|-------------------------|
| 1. श्रम राज्य मंत्री,
महाराष्ट्र सरकार | -- अध्यक्ष |
| 2. कल्याण आयुक्त,
नागपुर | -- उपाध्यक्ष |
| 3. क्षेत्रीय श्रम आयुक्त,
(केन्द्रीय) बम्बई | -- सदस्य (पदेन) |
| 4. श्रीमति राजकुमारी,
गोपालनारायण बाजपेयी, | -- सदस्य |
| 5. श्री बी. एस. वर्दिया,
जनरल सेक्रेटरी,
मानिकगढ़ सीमेंट फैक्टरी,
गडचन्दूर, जिला चन्द्रपुर | } नियोक्ता प्रतिनिधि |
| 6. श्री एम. एल. गुप्ता, महा प्रबंधक
चन्दा सीमेंट वर्क्स,
जिला-चन्द्रपुर। | |
| 7. श्री आर. एम. निर्मल,
जनरल सेक्रेटरी,
चन्द्रपुर जिला कामगार संघ
गडचन्दूर, जिला-चन्द्रपुर। | } -- कर्मचारी प्रतिनिधि |
| 8. श्री आर. एम. गेडव,
जनरल सेक्रेटरी,
विदर्भा स्टोन माइन्स वर्कर्स यूनियन,
सीमेंट नगर,
जिला चन्द्रपुर। | |
| 9. श्री. (श्रीमती) नीला आर मणिकेश्वर,
रामदास पेठ एग्रेसिभेशन,
नागपुर-440010 | -- महिला प्रतिनिधि |

2. कल्याण प्रशासक, श्रम मंत्रालय, भारत सरकार, नागपुर समिति के सचिव होंगे।

[सं. यू-19012/3/86-कल्याण-II के.]

बी० डी० नागर, अवर सचिव

New Delhi, the 15 June, 1989

S.O. 1499.—In exercise of the powers conferred by section 6 of the Limestone and Dolomite Mines Labour Welfare Fund Act 1972 (62 of 1972) read with sub-rule (2) of the rule 3 of the Limestone and Dolomite Mine Labour Welfare Fund Rules 1973, the Central Government hereby constitutes an Advisory Committee for the State of Maharashtra consisting of the following members, namely :—

- | | |
|--------------------------------------------------------|---------------------|
| 1. Minister of State for Labour, Govt. of Maharashtra, | Chairman |
| 2. Welfare Commissioner, Nagpur. | Vice-Chairman. |
| 3. Regional Labour Commissioner (Central), Bombay. | Member (Ex-Officio) |
| 4. Smt. Rajkumari Gopalnarayan Bajpai M.L.A | Member |

- | | |
|----------------------------------------------------------------------------------------------------|-------------------------------|
| 5. Shri B.S. Verdia, General Secretary, Manikgarh Cement Factory, Gadchander, District Chandrapur. | } Employers' Representatives. |
| 6. Shri M.L. Gupta, General Manager, Chanda Cement Works, District Chandrapur. | |

- | | |
|-------------------------------------------------------------------------------------------------------------|-------------------------------|
| 7. Shri R.M. Nirmal, General Secretary Chandrapur Zilla Kamgar Sangh, Gadchander, District Chandrapur. | } Employees' Representatives. |
| 8. Shri R.M. Gedam, General Secretary Vidarbha Stone Mines Workers Union Cement Nagar, District Chandrapur. | |

- | | |
|-------------------------------------------------------------------------------------------------------------------|-------------------------|
| 9. Prof. (Smt.) Neela R. Mankeshwar Ramdaspeeth Extension, Nagpur-440010. | Woman, Representatives. |
| 2. Welfare Administrator, Ministry of Labour Government of India, Nagpur shall be the Secretary of the Committee. | |

[No. U-19012/3/86-W.II(C)]

V. D. NAGAR, Under Secy.

नई दिल्ली, 15 जून, 1989

का. आ. 1500:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सहायक सुपिटेण्डेंट, पोस्ट आफिस (उत्तर), राजकोट के प्रबंधन से सम्बद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निश्चित औद्योगिक विवाद में औद्योगिक अधिकरण, अहमदाबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-6-89 प्राप्त हुआ था।

New Delhi, the 15th June, 1989

S.O. 1500.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Ahmedabad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Asstt. Surdt. of Post Offices (North), Rajkot and their workmen, which was received by the Central Government on the 6-6-1989

ANNEXURE

BEFORE SHRI G. S. BAROT, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL (CENTRAL), AHMEDABAD

Reference (ITC) No. 1 of 1987

ADJUDICATION

BETWEEN

The Management of Assistant Superintendent, Post Offices, Rajkot.—First Party.

AND

The workmen employed under it.—Second Party.

In the matter of termination of service of Shri

A. U. Solanki, Stamp Vender.

APPEARANCES :

Shri K. V. Gadhia, Advocate—-for the First Party.
Shri V. V. Thaker, Advocate—-for the Second Party.

AWARD

This industrial dispute between the management of Post Offices, Rajkot and their workman has been referred to me under Section 10(1)(d) of the Industrial Disputes Act, 1947, by the Government of India, Ministry of Labour's Order No. L-40012/52/85-D.II(B) dated 7th January, 1987.

2. The dispute relates to a single demand of the workmen which is as under :—

“Whether the action of the management of Assistant Post Offices (North) Rajkot in terminating the service of Shri Arjunbhai U. Solanki, Stamp Vendor is legal and justified ? If not, to what relief the workman is entitled ?”

3. Shri Arjunbhai U. Solanki (hereinafter referred to as ‘the workman concerned’) has filed his statement of claim Ex. 4 contending that he was appointed as a Stamp Vendor in the S. N. Gurukul Post Office, Rajkot on 2-7-1983; that the examination for selection of candidates was held on 22-8-1981 but he being the person from backward class was not selected and some other influential persons were selected; that thereupon he filed a civil suit No. 21/83 before the Civil Judge, (S.D.), Rajkot; that thereafter taking into consideration the allegations made in the said suit he was given appointment w.e.f. 2-7-1983; that thereafter the workman concerned was performing his duties honestly, efficiently and faithfully; that inspite of this by order dated 28-2-1984 his services were terminated with immediate effect without giving any reason therefor; that before terminating his services no notice was given; that the said action was taken to accommodate some other person; that the said action was taken without giving an opportunity of hearing to the workman concerned; that he has been made to suffer because of the union rivalry; that his termination is mala fide and against the principles of natural justice and, therefore, the same should be quashed and he should be reinstated in service with full back wages and costs.

4. The Deputy Senior Superintendent of Post Offices, Rajkot Division, Rajkot has filed the written statement Ex. 5 denying the allegations made in the statement of claim. It is contended that Shri Arjunbhai U. Solanki was one of the candidates in the examination for selecting suitable candidates for appointment; that it was competitive examination and the merit list was to be prepared on the basis of the marks obtained by the candidates in the said examination; that the said examination was conducted by the Post Master General, Gujarat Circle; that this examination was held at Rajkot Division on 22-8-81 and 689 candidates appeared in the said examination. Out of which 666 candidates were present in the first paper and 663 were present in the second and third paper; that out of these 689 candidates 162 candidates were from SC/ST; that out of 162 candidates from SC/ST 3 candidates were to be selected on merits; that the workman concerned had obtained only 38 marks (his Roll No. is RJ/545); that some other candidates from SC/ST and other candidates from general list had obtained more percentage of marks which are as under :—

SC/ST candidates		Candidates from general list	
Roll No.	Marks obtained	Roll No.	Marks obtained
588	54.50	209	63.50
656	54.25	228	63.00
626	54.00	218	61.00
		190	60.50
		483	59.50
		1	59.00
		371	58.50
		117	57.50
		688	57.00
		310	57.00
		247	56.00
		286	56.00

That looking to the marks obtained in the examination the workman concerned was not eligible for getting appointment because it was strictly according to merits. However, the workman concerned was allotted by the Senior Supdt. of Post Offices by his Memo No. SLR dt. 1-7-1983 to the Asstt. Supdt. of Post Offices, North Division who by his Memo No. B2/SA/SNG dated 2-7-1983 appointed the workman concerned as a temporary Stamp Vendor at S. N. Gurukul, Rajkot where the workman concerned joined that post on 4-7-1983. Thereafter the Director of Postal Services, Rajkot by his letter No. DPS/CNF/BJY daed 22-2-1984 informed that Sr. Supdt. of Post Offices that in the result of 17 candidates who were selected on merits, the name of the workman concerned was not there and the appointment given to him was irregular and therefore the services of the workman concerned should be terminated immediately. Thereupon the Asstt. Supdt. of Post Offices, South Division by his Memo No. P.F./AUS dt. 28-2-1984 terminated the services of the workman concerned. It is contended that the services of the workman concerned has not been terminated for any union rivalry or for any other reason but the same was terminated because his appointment was irregular and illegal and he was also paid one month's notice pay in lieu of notice.

5. The workman concerned has deposed at Ex. 17 and one Shri Shashikant Rabubhai Parikh, Asstt. Supdt. of Post Offices, Rajkot Ex. 20 deposed on behalf of the Department.

6. I have heard Shri V. V. Thaker for the workman concerned and Shri K. V. Gadhia, the learned Advocate for the Post Offices.

7. On behalf of the Post Offices it was contended in the first place that the reference is not competent inasmuch as Post Office is not an industry as defined under Section 2(J) of the Industrial Disputes Act, 1947. I have considered that contention and in my opinion it has no merit. The question has been decided and it is well settled that it is an industry. Coming to the merits of the case I have gone through the record of the case and have also considered the arguments advanced by the learned Advocates of the parties. The only question which require to be determined is whether the termination of the workman concerned was illegal. Though the workman concerned has tried to put up his case that he was appointed on an understanding in the High Court that he would withdraw his writ petition but as per his own say in his oral evidence Ex. 17 such an offer or assurance was not

given before the High Court and no reliance can be placed on the mere say of the workman concerned that he was given appointment on the assurance given to him in the High Court. It is apparent that the workman concerned has not obtained more marks than SC/ST candidates mentioned at Roll Nos. 588, 556 and 626 which are 54.50, 54.25 and 54.00 respectively. Even after adding 5 marks for knowing cycling and maximum 5 marks for experience aptitude as per his demand, his total marks would be $38+10=48$ which will be much below the three candidates mentioned hereinabove. The appointments were to be given strictly on merits in the competitive examination dated 22-8-1981. Therefore, the workman concerned is not entitled to get appointment as a Stamp Vendor. His appointment even though it is made either through mistake or for any reasons whatsoever is not in any way legal or regular. If the appointment itself is not legal or regular, the question of giving him hearing etc. will not arise. Moreover, he is purely a temporary employee and the Department has terminated his services after giving him one month's notice pay as per rules. In my opinion, there is no stigma attached. The action of the Postal Department is therefore quite legal and proper. I, therefore, reject the demand and dispute of the reference accordingly. No order as to costs.

Ahmedabad.

Dated : 5th May, 1989.

G. S. BAROT, Presiding Officer
[No L-40012/52/85-D.II(B)]

नई दिल्ली, 16 जून, 1989

का. अ. 1501—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केंद्रीय सरकार द्वारा टेलीफोन कोऑपरेटिव कैंटीन सोसाइटी लिमिटेड के प्रबंधन में सम्बद्ध नियोजकों और उनके कामकाजों के बीच, अनुबंध में निहित औद्योगिक विवाद में केंद्रीय सरकार औद्योगिक अधिनियम, नं. 1, बम्बई के अधिनियम को प्रकाशित करती है, जो केंद्रीय सरकार का 6-6-89 में प्राप्त हुआ था।

New Delhi, the 16th June, 1989

S.O. 1501.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, No. 1, Bombay as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Bombay Telephones Co-operative Canteen Society Limited and their workmen, which was received by the Central Government on the 6-6-1989.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, AT BOMBAY

Reference No. CGIT-33 of 1986

PARTIES :

Employers in relation to the management of Bombay Telephones Co-op. Canteen Society Limited.

AND

Their workmen

APPEARANCES :

For the Management—Mr. Talegaonkar, Advocate.

For the Workmen—Mr. S. Poojati, Advocate.

For the Bombay Telephones Co-operative Canteen Society Limited—Mr. S. C. Naidu, Advocate.

Industry : Telephones

State : Maharashtra

Bombay, dated the 23rd day of February, 1989

AWARD

The Central Government in exercise of the powers conferred by Clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, has referred the following dispute to this Tribunal for adjudication:—

“Whether the action of the management of Bombay, Telephones Co-op. Canteen Society Limited, Parel Telephone Complex, Parel Bombay in terminating the services of Shri Daju Shetty tea maker w.e.f. 18-9-1979 is justified? If not, to what relief the said workman is entitled?”

2. The workman, Shri Daju Shetty was employed as a Tea Maker by M/s. Bombay Telephones Co-operative Canteen Society Limited, (hereinafter referred to as the Canteen Society) which was running number of canteens for the employees of the Bombay Telephones, now known as Mahanagar Telephone Nigam Ltd. (hereinafter referred to as the Nigam). He was working in the canteen situated at Telecom Building, Ground floor, Fountain, Bombay in 1979. He was transferred to Cooperage Branch situated at Cooperage Building, 11th floor, M.G. Road, Bombay. By an order issued on 1-9-1979, the workman was sought to be transferred from the Cooperage Exchange Canteen to the Ghatkopar Exchange Canteen. The workman refused to accept this order which was sent to him through a clerk of the Society. The order was therefore sent by Registered post on 15-9-1979, but the packet containing the notice was returned unserved with the endorsement “refused”. The Society therefore by an order dated 18-9-1979, terminated the services of the workman with immediate effect and directed him to vacate the canteen premises peacefully.

3. By the same order services of some other employees were also terminated for the same reason. The workmen and the other employees whose services were terminated raised demand for reinstatement under section (2) (k) of the Industrial Disputes Act, 1947 and the same was referred to the Eighth labour court, Bombay. The reference which was numbered as (IDA) No. 69 of 1980, was rejected by the First Labour Court Bombay, on 17-5-1984, on the grounds that the appropriate Government in the case of the employees of the Bombay Telephones Canteen Committee was the Central Government and the State Government had no jurisdiction to make the refe-

rence. There after the workman sent a fresh demand letter dated 4-1-1985, to the Society but he did not receive any reply. Hence he sought intervention of the Assistant Commissioner of Labour (Central) Bombay who admitted the dispute in Conciliation. As none from the employer remained present before the Conciliation Officer he submitted a failure report to the Ministry of Labour, Central Government, who as mentioned above made the present reference.

4. As a copy of the order referring the dispute to this Tribunal was forwarded to the General Manager, Bombay Telephones, notice of the reference under rule 10B(1), (2) (3) of the Industrial Disputes (Central) Rules was issued to the General Manager, Bombay Telephones alongwith the Canteen Society. Initially the Bombay Telephones (Mahanagar Telephone Nigam Limited) ignored the said notice but on 3-9-1987, the said company put its appearance and submitted an application contending inter-alia that the Mahanagar Telephone Nigam Limited cannot be said to be a party to the purported dispute between the workman and the Bombay Telephones Co-operative Society Limited which is a separate legal entity and that the original order of reference does not say that any dispute exists between the workman and the Bombay Telephones or the Mahanagar Telephone Nigam Limited and hence notice of the reference issued to the General Manager Bombay Telephones, by this Tribunal was without jurisdiction and bad in law.

5. The workman opposed the application contending inter-alia that the Bombay Telephones now known as Mahanagar Telephone Nigam Ltd., is the department which runs the canteens with the help of the Society for the benefit of their employees and grants 70 per cent of the salary of the canteen employees as subsidy. Moreover, the head of Mahanagar Telephone Nigam Limited is the Ex-Office Chairman of the Society. In view of these facts the Society contended that the Mahanagar Telephone Nigam Limited is a necessary party to the reference and hence the Government rightly made the Bombay Telephones (Mahanagar Telephone Nigam Limited) a party to the reference. It was also pointed out that as mentioned in the written statement filed by the Bombay Telephones Co-operative Canteen Society Limited, the management of 13 out of 14 canteens previously run by the Society has been taken over by the Mahanagar Telephone Nigam Limited and the said canteens, including the canteen in which the workman Daju Shetty was working are being managed by departmental committees formed by the Mahanagar Telephone Nigam Limited. As this was the admitted position, the application filed by Mahanagar Telephone Nigam Limited was rejected on the ground that admittedly most of the canteens which were previously managed by the Co-operative Canteen Society are now managed by the departmental committees formed by the Mahanagar Telephone Nigam Limited and there is nothing prima facie to show that these committees are different legal entities. Being aggrieved by this order the Mahanagar Telephone Nigam Limited, filed a writ petition in the High Court of Judicature of Bombay. This writ petition was disposed off by the High Court on -1-1988, with direction to make Mahanagar Telephone Nigam Limited a party to the reference, leaving all other issues including the contention that the Nigam is not a necessary party to the reference open to be heard considered by this Tribunal on merits.

6. As per the direction of the High Court the workman was also allowed to suitably amend his statement of claim by incorporating new para 2(a) in his statement of claim, contending inter-alia that the Bombay Telephones now known as the Mahanagar Telephone Nigam Limited was his principal employer and that the canteen where the workman was working has been taken over by the principal employer and is in over-all charge of the canteen.

In its written statement the Bombay Telephone Co-operative Canteen Society Limited stated that the society was formed in pursuance to the notification dated 24-5-1950, issued by the Director of Post & Telegraph, notifying the sanction accorded by the President to the formation of the canteen and Co-operative Society by the Clerical and subordinate staff of the Post & Telegraph department in implementation of the post war scheme of welfare for the employees of the Post and Telegraph Department. The Society further submitted that Class-III and Class-IV employees of the Telegraph Department are the members of the Society, which operates on a no profit no loss basis and gets subsidy from the Post & Telegraph Department, Government of India, in respect of the wages to be paid to the employees of the canteen. The department also provides the society premises to run the canteen and supplies free of charge furniture, electricity, water, utensils, uniforms etc. for the running of the canteen. The Society further stated that the running of the canteen and the service conditions of the employees are implemented by the Post & Telegraph Manual issued by the Department of Personal Administration, Ministry of Home Affairs, and as per schedule (C) of notification dated 23-12-1980 issued by the Government of India, Ministry of Home Affairs, Department of Personnel and Administrative Reform, the Managing Committee of the Society is empowered to initiate disciplinary action against the workmen while the Honorary Secretary is the Appellate Authority and the General Manager of the Bombay Telephones who is ex-office Chairman of the Society, is reviewing authority. As per the Manual, any employee aggrieved by any decision taken by the managing committee has to prefer an appeal to the appellate authority and has to approach the reviewing authority viz. the Chairman of the Society, if the appeal fails. The workman can also make further application to the Director of Post & Telegraph. The Society contended that as the workman did not have recourse to the remedy available to him the belated reference made after 8 years after termination of the service of the workman deserves to be rejected as not maintainable. The Society further submitted that in the year 1979, they used to run and manage 14 canteens but at present the Society is running and managing only one canteen and hence the Society is not in a position to meet the belated demands raised by the workman because the place and post of his employment no longer exist. It was further contended that after refusing to receive the transfer order the workman did not care to attend duty either at his original place of work or at the canteen to which he was transferred. The Joint Honorary Secretary therefore was justified in terminating the workman's services. The Society further contended that the workman did not prefer an appeal to the Appellate Authority against the order of termination and hence the

order became final and cannot be challenged at this belated stage. The Society denied that the workman and others were transferred in vengeance because they agitated for higher wages and better service conditions. As the service conditions of the canteen employees including the salary scale and benefits were governed by circular issued by the Department of Personnel and Administration Reform, there was no question of the workman agitating for higher wages and better service condition. The Society maintained that the workman and other employees were transferred as per rules and regulations applicable and denied that the transfer was malafide or with ulterior motive as alleged. The Society also denied that the service of the workman was terminated as the management of the Society was annoyed with his activities. The Society also maintained that the workman was offered all legal dues but he refused to accept them. According to the Society the workman persistently refused to join duty in the canteen where he was transferred and his unwarranted absence in open defiance to the lawful orders of the management of the Society was an act subversive of discipline and therefore the management was fully justified in terminating the services in order to keep the essential services running. According to the Society, the workman is not entitled to reinstatement as there is no post where he can be accommodated in view of the fact that the management has now only one canteen under its management. Moreover, he would have automatically ceased to be in the employment of the Society, as he would have been rendered surplus due to the surrendering of the canteen to the Mahanagar Telephone Nigam Limited and also from the date on which he was due to retire from the service of the Society. The workman, according to the society, is also not entitled to back-wages because the society will not be able to bear the burden of back wages and the workman is solely responsible for the delay in raising the dispute and that the workman was gainfully employed during the entire period.

8. In their written statement the Mahanagar Telephone Nigam Limited contended that neither they are appointing nor the disbursing authority nor the disciplinary authority for any of the workmen employed by the canteen. The Nigam further contended that there was no master servant relationship between the canteen employees and the Mahanagar Telephone Nigam Limited, nor was there any nexus between the Mahanagar Telephone Nigam Limited and the Society except to the extent of giving 70 per cent subsidy to the Society. It was further contended that there is no post under the General Manager where the workman can be employed. Moreover, in view of the recruitment ban the workman cannot be reinstated in service. As regards the facts of the case the Mahanagar Telephone Nigam Ltd. adopted the statements made in the written statement filed by the Joint Honorary Secretary of the Co-operative Canteen Society Limited.

9. In the written statement filed after the decision of the writ petition, the Mahanagar Telephone Nigam Limited reiterated the position that they are not concerned with the reference and that they are not proper and necessary party to the said reference and prayed that this question be decided as a preliminary point. Without prejudice to this submission the Mahanagar Telephone Nigam Limited further submitted

that at present the appropriate authority is the committee of each exchange which is handling the affairs of the canteen attached to the said exchange and which consists of Divisional Engineer, Assistant Engineer or Accounts Officer and other members of the committee as may be nominated by the exchange and hence for effective compliance of any order that may be passed in this reference the committee which at present is the appointing authority, disciplinary authority and payment disbursing authority should be involved in the reference and so for as the Mahanagar Telephone Nigam Limited is concerned the reference be dismissed with costs. By separate application filed on 6-5-1988, the Mahanagar Telephone Nigam Limited prayed that the question whether the Mahanagar Telephone Nigam Limited is a necessary and proper party to the reference be decided as a preliminary point and that the Cooperage Telephone Exchange Departmental Canteen Committee consisting of Shri M. G. Kulkarni, Divisional Engineer, Cooperage Exchange as Chairman and Shri A.L.U. Patel Assistant Engineer (Efficiency) as Secretary be added as party respondent by amendment of the order of reference or suo moto. The workman opposed this application on the ground that the Cooperage Departmental Canteen Committee is creation of the Mahanagar Telephone Nigam Limited itself and that it is not a separate legal entity.

10. There is no substance in the contention that the Mahanagar Telephone Nigam Limited is neither necessary nor proper party to the reference and that for effective decision of the reference it is necessary to join the Cooperage Exchange Departmental Canteen Committee as a party to the reference. Admittedly, the management of the canteen at the Cooperage Telephone Exchange is taken over by the Mahanagar Telephone Nigam Limited. The canteen is presently managed by the departmental canteen committee consisting of a Chairman and a Secretary. Both these positions are held by officers of the Mahanagar Telephone Nigam Limited and as is clear from the name of the committee itself it is clear that the canteen is managed departmentally by a committee constituted by the Mahanagar Telephone Nigam Limited. There is nothing on record to show that the Cooperage Telephone Exchange Departmental Canteen Committee is a separate legal entity. As rightly contended on behalf of the workman the committee is constituted by the Mahanagar Telephone Nigam Limited to manage the canteen and the committee is managing the canteen as an agent of the Mahanagar Telephone Nigam Limited which is now the employer of the workmen employed in the canteen in question. The Mahanagar Telephone Nigam Limited therefore is a necessary party to the reference and would be bound by this award.

11. The services of the workman were terminated by way of disciplinary action for the misconduct of committing an act subversive of discipline by refusing to obey the transfer order. The termination order was passed without holding an enquiry and without giving an opportunity to the workman to show cause. No charge sheet was served on the workman, no enquiry officer was appointed and no disciplinary proceedings were held before the termination order was passed by the Joint Honorary Secretary of the So-

ciety. There is also sufficient material on record to substantiate the contention of the workman that the transfer order was itself mala fide and was passed because the workman Daju Shetty and other employees of the Cooperage Exchange Canteen were agitating for better wages and better service conditions.

12. In his letter dated 7-6-1979, (Ex. W-2) addressed jointly to the Joint Honorary Secretary of the Canteen and the Mahanagar of the Cooperage Canteen the General Secretary made a serious grievance about the treatment given to Daju Shetty and other nine employees of the Cooperage Canteen. He stated as follows :—

“Our members employed in your canteen (whose names appear in the schedule hereto) have reported to this office that you have stopped them from work with effect from 6-6-79 and removed them from the canteen premises forcibly without written notice for the reason best known to you. Their bag and bages are also lying in the Canteen premises.

According to the workmen, you have not paid their earned wages for the period ranging from 2 months to five months inspite of their repeated demands and request. When the workmen insisted for the payment of their earned wages, you stopped them from the work and removed them forcibly from the canteen premises. The workers were not given any notice in writing. The wages paid to the workmen are far below the minimum as they are entitled to be paid the minimum wages of Rs. 189/50 for Cleaners and Rs. 208.50 for Waiters, Vendors etc. and Rs. 257.50 for Cooks etc. The workers are therefore entitled to receive the difference of wages. A complaint has already been lodged with the Colaba Police Station about their forcible removal.

We state that your aforesaid action is improper, and illegal, we, therefore, call upon you to reinstate the workers with full backwages and continuity of service and pay their earned wages within 24 hours of the receipt of this letter, failink which, we shall be compelled to take direct trade union action such Demonstration, Picketing, etc. to secure justice to the workmen at your own risk as to the cost and consequences which please note.”

Before that the Joint Honorary Secretary of the Society had written the following letter to the Area Manager (South), Bombay Telephones, Cooperage Exchange, Bombay, on 16-5-1979, (Ex. W-1) :—

“The Employees of the Canteen in Cooperage are not prepared to go to work as they have not received the salary from the Manager who is supposed to pay them on or before 10th of every month.

It is further learnt that the General Body Meeting of the staff was conveyed by Shri N. V. Lokhande in April 1979 where it was decided to take over the canteen and run the

same departmentally through sub-committee formed by the staff. However, the Society is not appraised of the same so far.

The Society had issued order for transfer of the Manager Shri Vasu Shetty, on receipt of complaint from Shri Rajaram, DET it appears that some members of staff have sided him which ultimately resulted in his defying the orders and continuing to run the canteen as Manager in Cooperage.

Under the circumstances I have to bring to your kind notice that the society be not held responsible for payment of staff of canteen of closure of canteen by staff as they are even not prepared to work till Shri Vasu Shetty the Manager should honour the society and act on their order and make payment immediately which may please be noted.

Further it is also informed by the workers that the said Shri Vasu Shetty brought 6 to 8 outsiders to work in their absence and the watchman is allowing them to enter even to the Exchange premises.”

It is pertinent to note that the transfer order came to be passed on this background. It will also be seen from the report (Exh. W-4) submitted by the Conciliation Officer to the Deputy Commissioner of Labour (Admin.), Bombay that the Hotel Mazdoor Sabha, of which the workman was a member promptly raised an industrial dispute in respect of the termination order passed on 18-9-1979 by the Joint Honorary Secretary of the Society. The Conciliation Officer has quoted what the Union stated in justification of the demand. The relevant recitals are as follows :—

“The Union in a justification statement on 20th September 1979 stated that Shri Kusha N. Devadiga, Waiter, service 2 years pay Rs. 130.50 plus Food, Shri Daju Shetty, Tea maker, service 8 years, pay Rs. 202/- plus food, Shri Kishan G. Kawdekar, Tea Maker, service 3 years, pay Rs. 130.50 plus food, Shri Shivana Poojari Cook, Service 2 years, pay Rs. 150/- and Shri Bhaskar Shetty, Cleaner, Service 4 years (age 17 years), Pay Rs. 85.50 plus food, were employed by the above Management and their services were terminated with effect from 18-9-1979. Many new workmen have been employed in the Cooperage Telephone Exchange Canteen, but the old ones are being transferred to other canteens, to harass them and victimise them. The workers have been victimised from service by way of termination of service, for their legitimate trade union activities. They were not being paid the minimum wages in time. The workers were not given any show cause notice or charges sheet nor any enquiry was held. The workers have not committed any misconduct as such. The Management's action in terminating the services of the above workmen is improper, mala fide, illegal and against the rules of natural justice and well settled tenants of Industrial Law. It was

thus contended by the Union that the above workmen were wrongfully dismissed by the Management."

The allegations in the justification statement remained uncontroverted because as stated by the Conciliation Officer none from the management attended the proceedings nor the management of the canteen Society, submitted any written statement concerning the dispute. There is therefore substance in the contention of the workman that the transfer order was passed malafide as a part of harassment given to him at the Cooperage Canteen and that he was victimised by terminating his services on the ground of refusal to accept the transfer order. The order of termination therefore deserves to be set aside.

13. However, no relief can be granted to the workman, in this reference. He cannot be reinstated in service nor would he be entitled to any back-wages because he had reached the age of superannuation even before his services were terminated. It will be seen from the application submitted by the workman

on 24-11-1971, for securing employment in Bombay Telephones Co-operative Canteen Society Limited, that the workman had given his date of birth as January 1919. Therefore he reached the age of superannuation even before he was transferred and before his services were terminated. He reached the age of superannuation in January 1979 itself. The Society has specifically raised this contention in its written statement while opposing the reinstatement and the workman did not place on record any material to show that his date of birth was different. As a matter of fact, he would have been estopped from doing so because he himself had given his date of birth as January 1919 in the application on the basis of which he secured employment with the Canteen Committee. The workman however, would be entitled to get all the pensionary benefits as per rules on the footing that he retired on superannuation. Award accordingly.

M. S. JAMDAR, Presiding Officer
[No. L-40012/51/85-D.II(B)]
HARI SINGH, Desk Officer